Township Organization Law

OF THE

STATE OF MISSOURI

Compiled From the Revised Statutes of 1909
and Laws of Missouri, 1911

BY

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STATE AUDITOR

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PREFACE.

This pamphlet contains the township organization law of the State of Missouri, as embodied in the Revised Statutes of 1909 and Laws of Missouri, 1911, and is printed for the information of the revenue officers in counties under township organization.

JNO. P. GORDON,
State Auditor.

City of Jefferson, October 1, 1911.

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TOWNSHIP ORGANIZATION LAW.

CHAPTER 118.

TOWNSHIPS.

SECTION		SECTION	
11650.	How laid off, subdivided, consolidated or changed.	11651.	Name and description to be recorded and transmitted.

Sec. 11650. How laid off, subdivided, consolidated or changed.—Each county court may divide the county into convenient townships, and, as occasion may require, erect new townships, subdivide townships already established, or better township lines, and may, upon the petition, in writing, of not less than fifty residents of the townships affected, consolidate any two or more existing townships into one township, or otherwise reduce the number of townships, or change the boundary lines thereof, as may be deemed advisable. (R. S. 1899, § 10223, amended, Laws 1909, p. 870.)

In an action of tort where the boundaries of a township are collaterally in issue, the same may be proved by oral evidence as matters of common repute, notwithstanding there is a public record of such boundaries. Young v. Ry., 39 A. 52.

Sec. 11651. Name and description to be recorded and transmitted.—The court shall, within thirty days after establishing any township, transmit to the office of the secretary of state a description of such township, containing the name and boundaries thereof, and shall cause the clerk to enter such description of record. (R. S. 1899, § 10224.)

CHAPTER 119.

TOWNSHIP ORGANIZATION.

ARTICLE I—Adoption of township organization.
II—Townships as bodies corporate.
III—Alteration of township boundaries.
IV—Township elections.
V—Officers, qualifications and tenure.
VI—Officers, vacancies and appointments.
VII—Trustees and their duties.
VIII—Clerks and their duties.
IX—Board of directors, etc., duties.
X—Officers, compensation.
XI—County treasurers as *ex officio* collectors.
XII—Revenue, assessment and collection of.
XIII—Special provisions.
XIV—Roads, highways and bridges.

ARTICLE I.

ADOPTION OF TOWNSHIP ORGANIZATION.

SECTION
11652. Voters may vote for or against township organization.
11653. Question submitted—form of ballot.
11654. Returns, how proceeded with.
11655. Organization to go into effect, when.
11656. Township election, when to be held.

Sec. 11652. Voters may vote for or against township organization.—At any general election that may be holden in the several counties of this state, the qualified voters in any county may vote for or against township organization, as provided by this article. (R. S. 1899, § 10225.)

As to the unconstitutionality of laws relating to township organization as they existed before 1897, see State ex rel. v. Gibson, 195 Mo. 251.

The courts will not take judicial notice of the adoption of township organization, but where same is in issue it should be pleaded and proved. Robinson v. Jones, 71 Mo. 582; Rousey v. Wood, 47 A. 465.

For laws governing the selection of depositaries for township funds, see Sec. 3803.

Sec. 11653. Question submitted—form of ballot.—The county court, on petition of one hundred legal voters of said county, shall cause to be submitted to the voters of the county the question of township organization under this article, by the ballot, to be written or printed, "for township organization," or "against township organization," to be canvassed and returned in like manner as votes for state and county officers. (R. S. 1899, § 10226.)

A finding by county court that a petition is signed by one hundred "taxpayers," instead of one hundred voters, renders the election held on such petition and finding

void. Macey v. Carter, 76 A. 490. A proposition to adopt township organization can only be submitted upon petition. Rousey v. Wood, 57 A. 650. The failure of the county clerk to make and publish an abstract of the returns of an election on township organization does not defeat its adoption. Rousey v. Wood, 63 A. 460.

Ballot.—Printing the proposition to adopt township organization in the affirmative and negative forms on the ballots of a general election, with a direction to "erase the clause you do not favor," does not render such ballots invalid. Applegate v. Eagan, 74 Mo. 258.

Constitutionality of law.—Although the provisions of the law under which township organization was adopted prior to 1897 were unconstitutional, if a proper vote was taken on that proposition after the constitutional law was enacted in 1897 and a majority of the votes at such later election were in favor of township organization, its adoption will be consummated, notwithstanding the petition for such last election as well as the order therefor contained recitals indicating a desire of the petitioners to dispense with township organization in the county, and not to legalize or continue same. State ex inf. v. Russell, 197 Mo. 633.

Sec. 11654. Returns, how proceeded with.—The clerk of the county court shall cause an abstract of the returns of said election to be made out and certified as in election for state and county officers, record the same at length upon the records of the county court of the county, and shall certify the same to the secretary of state. (R. S. 1899, § 10227.)

Failure of clerk to make and publish an abstract of the returns of an election which resulted in the adoption of township organization does not suspend the law so adopted. Rousey v. Wood, 63 A. 460.

Sec. 11655. Organization to go into effect, when.—If it shall appear by the returns of said election that a majority of the legal voters of the county voting upon that proposition at said election are for such organization, then the county so voting in favor of its adoption shall be governed by and subject to the provisions of this chapter, on and after the last Tuesday in March next succeeding. (R. S. 1899, § 10228, amended, Laws 1903, p. 271.)

This section, as it existed prior to 1897, was unconstitutional. State ex rel. v. McGowan, 138 Mo. 187; State ex rel. v. Gibson, 195 Mo. 251; State ex inf. v. Munn, 201 Mo. 214. But as amended in 1897 (Laws 1897, p. 234), and as amended in 1903 (Laws 1903, p. 271), it conforms to the Constitution. State ex inf. v. Russell, 197 Mo. 633.

See, also, Sec. 8, Art. 9, Const., as amended, 1902, Vol. 1, page 110.

Sec. 11656. Township elections, when to be held.—The clerk of the county court shall thereupon make out notices for each township, designating the time and place for holding the first township election in such township, which shall be holden on the last Tuesday in March next thereafter, and shall deliver such notices to the sheriff of the county, who shall cause the same to be posted up in not less than three of the most public places in the township, and not less than fifteen days before the last Tuesday in March; and the township clerk shall post up notices of all subsequent elections, as directed by the township board of directors. (R. S. 1899, § 10229.)

ARTICLE II.

TOWNSHIPS AS BODIES CORPORATE.

SECTION
11657. Powers of townships.
11658. Townships have no powers except those given by law.
SECTION
11659. Proceedings against townships—conveyances.

Sec. 11657. Powers of townships.—Each township, as a body corporate, shall have power and capacity: First, to sue and be sued, in the manner provided by the laws of this state; second, to purchase and hold real estate within its own limits for the use of its inhabitants, subject to the power of the general assembly; third, to make such contracts, purchase and hold personal property, and so much thereof as may be necessary to the exercise of its corporate or administrative powers; fourth, to make such orders for the disposition, regulation or use of its corporate property as may be conducive to the interest of the inhabitants thereof; fifth, to purchase at any public sale, for the use of said township, any real estate which may be necessary to secure any debt to said township or the inhabitants thereof, in their corporate capacity, and to dispose of the same. (R. S. 1899, § 10230.)

The power to purchase a site and erect thereon a hall for the transaction of township business is vested solely in the board of directors of such township, and the township treasurer may be compelled by *mandamus* to pay warrants issued for expenses of building such hall if he have funds for that purpose. State ex rel. v. Haynes, 72 Mo. 377. In an indictment for stealing property of a township, it is not necessary to allege the organization of such township, nor that the property stolen was necessary for the exercise of its corporate powers, but such facts may be proved upon the trial. State v. Bench, 68 Mo. 78.

Sec. 11658. Townships have no powers except those given by law. No township shall possess any corporate powers, except such as are enumerated or granted by this chapter, or shall be specially given by law, or shall be necessary to the exercise of the powers so enumerated or granted. (R. S. 1899, § 10231.)

See cases cited under Sec. 11657.

Sec. 11659. Proceedings against township—conveyances.—All acts or proceedings by or against a township in its corporate capacity shall be in the name of such township and county; but every conveyance of land within the limits of such township, made in any manner for the use and benefit of its inhabitants, shall have the same effect as if made to the township by name. (R. S. 1899, § 10232.)

ARTICLE III.

ALTERATION OF TOWNSHIP BOUNDARIES.

SECTION
11660. Township boundaries and new townships, how changed and constituted.
11661. Duties of county clerk in case new township is created.
11662. Proceedings in case of neglect or refusal to organize.
11663. On failure of appointed officers to qualify, townships may be annexed.
11664. Partition of property of divided township, how made.
11665. Meetings to carry this article into effect, how called.
11666. Debts of divided township, how charged.
11667. Justices of the peace and constables not affected by township changes.

Sec. 11660. Township boundaries and new townships, how changed and constituted.—The county court of each county shall have power to alter the boundary of townships and to increase or diminish their number, as follows, viz.: Upon the petition of one-fourth of the voters of the township or townships proposed to be altered, the county court shall submit the proposed alteration to the qualified voters thereof at any regular township election, by giving at least thirty days' notice thereof to such township or townships, in the usual manner of giving election notices; and if such alteration shall be ratified by a majority of two-thirds of the votes cast by the voters affected thereby, then such alteration shall be confirmed by the county court, and each township shall be named in accordance with the expressed wishes of its inhabitants. (R. S. 1899, § 10233.)

Sec. 11661. Duties of county clerk in case new township is created. The county clerk shall, within thirty days after the county court has established any new township, or changed the boundary lines of any or all the townships in their respective counties, transmit to the secretary of state, who shall keep a record of the same, an abstract of such division or change, giving the bounds of such township and the name designated; and said county clerk shall record, in a book kept for that purpose, a description of each township as fully as in such report to the secretary of state. (R. S. 1899, 10234.)

Sec. 11662. Proceedings in case of neglect or refusal to organize. In case any township in any county in which township organization has been or may hereafter be adopted shall refuse or neglect to organize and elect township officers at the time required by law for holding township elections, it shall be lawful for any twelve householders of the township to call a township meeting for the purposes aforesaid, by posting up notices in five public places of said township, giving at least ten days' notice of such meeting, setting forth the time, place and object of such meeting. And the electors, when assembled by virtue of such notice, shall have all the powers conferred upon them at the regular township election. In case no such notice shall be given as aforesaid, within thirty days after the time for holding the regular township elections, the county court shall, upon the affidavit of any

freeholder of said township, filed in the office of the county clerk, setting forth the facts, proceed at any regular or special session of the court to appoint the necessary officers for such township, and the persons so appointed shall hold their offices until others are chosen or appointed in their places, and shall have the same powers and be subject to the same duties and penalties as if chosen by the electors of the township. (R. S. 1899, § 10235.)

Sec. 11663. On failure of appointed officers to qualify, townships may be annexed.—Whenever it shall be made to appear to the county court that the township officers appointed by them, as provided in the foregoing section, shall have failed to qualify as required by law, so that such township cannot become organized, the county court may annex such township to any adjoining township, and said township so annexed shall thereafter constitute a part of said adjoining township, unless changed by the county court under the provisions of this chapter. (R. S. 1899, § 10236.)

Sec. 11664. Partition of property of divided township, how made. When a township, seized of real estate, shall be divided into two or more townships, the township trustees and assessors of the several townships constituted by said division shall meet as soon as may be after the first township election subsequently held in such townships, and when so met shall have power to make such agreement concerning the disposition of such township property, and the division thereof, as shall be equitable, and to take all measures and to execute all conveyances necessary to carry such agreement into effect. (R. S. 1899, § 10237.)

Sec. 11665. Meetings to carry this article into effect, how called. Whenever a meeting of the township trustees and assessors of two or more townships shall be required to carry into effect the provisions of this article, such meeting may be called by either of said township trustees; but the township trustees calling the same shall give at least three days' notice, in writing, to all of the other officers, of the time and place at which such meeting is to be held. (R. S. 1899, § 10238.)

Sec. 11666. Debts of divided township, how charged.—Debts owing by a township so subdivided or altered shall be apportioned in the same manner as personal property of such township, and each township shall be thereafter charged with its share of such debts, according to such apportionment. (R. S. 1899, § 10239.)

Sec. 11667. Justices of the peace and constables not affected by township changes.—No change or alteration of the boundaries of a township shall vacate the office of any justice of the peace elected and residing therein, but such justice shall be a justice of the township into which he may be thrown by such change or alteration, and shall hold his office for the term for which he was elected. Constables shall also be subject to the provisions of this section. (R. S. 1899, § 10240.)

ARTICLE IV.

TOWNSHIP ELECTIONS.

SECTION		SECTION	
11668.	Elections, when and where held.	11674.	Township clerk to transmit list of officers-elect to county clerk.
11669.	Officers to be chosen.	11675.	Township clerk to notify persons elected.
11670.	Additional justices may be elected, when.	11676.	Townships to be election precincts—judges of election.
11671.	Elections to conform to general election law.		
11672.	Qualification of voters.		
11673.	Canvass of votes and disposition of poll books.		

Sec. 11668. Elections, when and where held.—The citizens of the several townships in all counties having adopted the township organization law of this state, who are qualified by the Constitution and laws of this state to vote at general elections, shall assemble biennially on the last Tuesday in March at their usual place of voting, or at such place in their respective townships as they may have previously agreed upon, for the purpose of electing township officers and such other officers and transacting such other business as may be necessary. (R. S. 1899, § 10241.)

Sec. 11669. Officers to be chosen.—There shall be chosen at the biennial election in each township one trustee, who shall be *ex officio* treasurer of the township, one township collector, and one township clerk, who shall be *ex officio* township assessor, one constable, two members of the board, and two justices of the peace: *Provided*, the same persons may be elected members of the board and justices of the peace, at the same election, and hold both offices, also the same person may be elected constable and collector at the same election and hold both offices at the same time, by taking the proper oath of each office and giving the bond required by law. (R. S. 1899, § 10242.)

Township officers are elected for two years. See Sec. 11684.

For law governing selection of depositaries for township funds, see Sec. 3803.

Sec. 11670. Additional justices may be elected, when.—In all townships having a population of over two thousand inhabitants, it shall be lawful for the qualified voters thereof to elect an additional justice of the peace for every two thousand inhabitants until the population reaches six thousand, after which the number of justices shall not be increased. Said additional justices shall be elected and commissioned and shall have the same powers and perform like duties as other justices of the peace have and perform by law. (R. S. 1899, § 10243.)

Sec. 11671. Elections to conform to general election law.—On the day of the township election the polls shall be opened between seven and eight o'clock a. m. and be kept open until six o'clock p. m. by the judges of the election, and when so opened the electors of the township shall have to elect all officers to be chosen at said election. Said officers shall be chosen by ballot. Each ballot shall contain the

name of every officer or measure voted for, written or printed on the face of such ballot, and the name of the office for which the persons voted for are intended to be chosen, which ballot shall be folded so as to conceal the names of the persons voted for; where the names of two or more persons appear on any ballot for the same office, such ballot shall be rejected by the judges in canvassing the votes, only as to the persons erroneously voted for. Said township election shall in all things conform to the general law concerning elections for state and county officers, so far as the same is consistent with the provisions of this chapter. (R. S. 1899, § 10244.)

Sec. 11672. Qualifications of voters.—No person shall be a voter at any township election unless he be a qualified voter at general elections, and has been an actual resident of the township in which he offers to vote for sixty days next preceding such election. (R. S. 1899, § 10245.)

Sec. 11673. Canvass of votes and disposition of poll books.—The votes shall be opened and canvassed according to the laws governing general elections for state and county officers, and, when completed, the poll books shall be signed by the judges and clerks of election, and, together with the ballots, shall be filed in the office of the township clerk within two days after such election. (R. S. 1899, § 10246.)

Sec. 11674. Township clerk to transmit list of officers-elect to county clerk.—The township clerk shall transmit to the county clerk, to be filed in his office, a list of the names of the township officers so elected, within five days after such election shall have been held. (R. S. 1899, § 10247.)

Sec. 11675. Township clerk to notify persons elected.—The township clerk shall, within ten days after such township election, transmit to each person elected to any township office a notice of his election. In case two or more persons shall receive an equal number of votes for the same office, the question of which shall be entitled to the office shall be decided between them by lot, under the direction of the township clerk. (R. S. 1899, § 10248.)

Sec. 11676. Townships to be election precincts—judges of election.—Each township acting under township organization may be divided into as many election precincts by the county court as the court may think the convenience of the electors requires; and the judges of all elections held for township purposes shall be appointed by the township board; but if said board should fail to appoint judges, or if any of the judges appointed should fail or refuse to serve or not be present by eight o'clock on the day of election, then the electors present shall have power to choose from their number men to act as said judges. The judges of election shall have power to appoint two clerks of said election. The judges and clerks shall be sworn and the election conducted in like manner as elections for state and county offices, except as provided in this chapter. (R. S. 1899, § 10249.)

ARTICLE V.

OFFICERS, QUALIFICATION AND TENURE.

SECTION		SECTION	
11677.	Eligibility to office.	11682.	Constable's bond to be filed.
11678.	Officers to take oath.	11683.	Penalty for refusal to serve by any one appointed or elected to office.
11679.	Elected candidates to file acceptance.	11684.	Duties of outgoing and incoming officials.
11680.	Treasurer and collector to give bond.	11685.	Same.
11681.	Constable to take oath and give bond.		

Sec. 11677. Eligibility to office.—No person shall be eligible to any township office unless he shall be a qualified voter and a resident of such township. (R. S. 1899, § 10250.)

Sec. 11678. Officers to take oath.—Every person chosen or appointed to the office of township trustee and *ex officio* treasurer, member of the township board, township collector, or township clerk, and *ex officio* township assessor, or constable before he enters on the duties of his office and within ten days after he shall be notified of his election or appointment, shall take and subscribe, before some justice of the peace, such oath or affirmation as is prescribed by law. (R. S. 1899, § 10251.)

Sec. 11679. Elected candidates to file acceptance.—Such person shall, within ten days thereafter, cause such certificate, together with his acceptance of the office, to be filed in the office of the township clerk; his neglect or refusal so to do shall be deemed a refusal to serve. (R. S. 1899, § 10252.)

Sec. 11680. Treasurer and collector to give bond.—Every person elected or appointed to the office of township trustee and *ex officio* treasurer, before he enters on the duties of his office and within ten days after his election or appointment, shall execute and deliver to the township clerk a bond with one or more sureties, to the satisfaction of the township clerk, payable to the township board, in double the amount of all the township funds, including school moneys, that may come into his hands; and every such bond, when deposited with the township clerk as aforesaid, shall constitute a lien upon all the real estate within the county belonging to such trustee and *ex officio* treasurer at the time of filing thereof, and shall continue to be a lien until its conditions, together with all costs and charges which may accrue by reason of any prosecution thereon, shall be satisfied. The township collector shall, before he receives the tax books, give bond and security to the state, to the satisfaction of the county court, in a sum at least double the amount of all the revenue to be collected by him for any one year, including school taxes; such bond shall be executed in duplicate; one part thereof shall be deposited and recorded in the office of the clerk of the county court, and the other part shall be transmitted by the clerk to the state auditor. The conditions of such bond shall be that he, the said col-

lector, will faithfully and punctually collect and pay over all state, county, township and other revenue, including school taxes, that may become due and collectible during the period for which such collector shall be elected or appointed; and that he will in all things faithfully perform all the duties of the office of township collector according to law. (R. S. 1899, § 10253.)

A township trustee and *ex officio* treasurer having given bond to a township, a suit was properly brought against him in the name of the township for school moneys which he had received and failed to pay over to his successor. Salem Twp. v. Cunningham, 45 A. 614.

Sec. 11681. Constable to take oath and give bond.—Every person chosen or appointed to the office of constable, before he enters upon the duties of his office, and within ten days after he shall be notified of his election or appointment, shall take and subscribe before some justice of the peace of said township the oath of office prescribed by law, and shall execute, with two or more sureties, an official bond, payable to the township trustee, and to be approved by the township board, which bond shall be conditioned for the faithful discharge of all his official duties. (R. S. 1899, § 10254.)

The sureties on a constable's bond given under this section are not liable unless the constable also executed such bond. Bunn v. Jetmore, 70 Mo. 228. If constable enter into bond to the state instead of to the township, as required by this section, it may be enforced as a common law obligation. State ex rel. v. Horn, 94 Mo. 162.

Sec. 11682. Constable's bond to be filed.—The township trustee shall, when the approval of the township board of directors shall be indorsed on said bond, cause the same to be filed in the office of the township clerk; and a copy of such bond, certified by the township clerk, shall be presumptive evidence in all courts of this state of the execution thereof by such constable and sureties. (R. S. 1899, § 10255.)

Sec. 11683. Penalty for refusal to serve by any one appointed or elected to office.—Any person chosen or appointed to fill any township office, except that of justice of the peace, who shall refuse to serve, shall forfeit to the township the sum of five dollars for the use of the contingent fund, and said forfeiture, if not otherwise paid, shall be collected by any justice of the peace of said township, as may be provided by law. (R. S. 1899, § 10256.)

Sec. 11684. Duties of outgoing and incoming officials.—If any township officer who is required by law to take the oath of office shall enter upon the duties of his office before he shall have taken such oath, he shall forfeit to the township the sum of twenty dollars, to be collected and applied as in the preceding section. Township officers shall hold their offices for two years, and until their successors are chosen or appointed and qualified. (R. S. 1899, § 10257.)

Sec. 11685. Same.—Whenever the term of office of any township officer shall expire, and others are elected or appointed and qualified as their successors, such successors shall, immediately after entering upon the duties of their office, demand and receive from his or their predecessors, or their legal representatives, all the books, papers

and money under his or their control belonging to such office, and such books, papers and other property shall be delivered upon oath that the same are all the moneys, books, papers and other property under his control belonging to such township; duplicate receipts shall be given the outgoing officer for the same, who shall retain one copy and deliver the other to the township clerk, who shall charge the incoming officer with the value thereof. (R. S. 1899, § 10258.)

ARTICLE VI.

OFFICERS, VACANCIES AND APPOINTMENTS.

SECTION		SECTION	
11686.	Vacancies in office to be filled by township board.	11687.	Warrant of appointment—notification to appointee.
		11688.	Resignations, how accepted.

Sec. 11686. Vacancies in office to be filled by township board.—Whenever any township shall fail to elect the proper number of officers to which such township may be entitled, or when any person elected or appointed shall fail to qualify, or when any vacancy shall happen in any township office from any cause, it shall be lawful for the township board to fill such vacancy by appointment, and the person so appointed shall hold the office and discharge all the duties of the same during such unexpired term, and until his successor is elected or appointed and qualified, and shall be subject to the same penalties as if they had been duly elected: *Provided,* that any vacancy in the office of justice of the peace or in the township board shall be filled by appointment of the county court. (R. S. 1899, § 10259.)

Sec. 11687. Warrant of appointment—notification to appointee. Whenever any appointment shall be made, as provided in the preceding section, the township board shall cause a warrant of appointment to be filed in the office of the township clerk, who shall immediately give notice to the person or persons appointed: *Provided,* that when the county court shall make such appointment they shall cause notice thereof, in writing, to be transmitted by the county clerk to the township clerk, who shall file the same and give notice to the appointee, as hereinbefore provided. (R. S. 1899, § 10260.)

Sec. 11688. Resignations, how accepted.—The township board may, at any legally convened meeting, for a good and sufficient cause shown to them, accept the resignation of any township officer: *Provided,* that in all cases where the action of the township board is required, as provided in the foregoing section, a majority of the members concurring therein, shall be taken as the action of the board. (R. S. 1899, § 10261.)

ARTICLE VII.

TRUSTEES AND THEIR DUTIES.

SECTION
11689. Collector to receive and pay over moneys—suits on default.
11690. Suits for collection of penalties.
11691. Duties of trustee and *ex officio* treasurer.
11692. Money to be paid out only on order of township board—school districts not affected.
11693. Treasurer to settle annually, etc.—duty of board.

Sec. 11689. Collector to receive and pay over moneys—suits on default.—The township trustee and *ex officio* treasurer of each township shall receive and pay over all moneys raised therein for defraying township expenses: *Provided,* that before entering on the duties of his office he shall execute such bond as is required in section 11680; and in case of default, it is hereby made the duty of the township clerk to institute suit thereon, in the name of the township, in any court of competetnt jurisdiction. (R. S. 1899, § 10262.)

In general.—It is the duty of the township trustee to pay all warrants which are legally drawn on him by the township board, and he cannot resist payment because the warrant was drawn for expenses of purchasing a site and erecting a public building which had not been authorized by a vote of the whole township State ex rel. v. Haynes, 72 Mo. 377. The township may maintain action against the trustee on his official bond for failing to pay over school moneys to his successor. Salem Twp. v. Cunningham, 45 A. 614.

Township depositaries.—For laws governing selection of depositaries for township funds, see Sec. 3803.

Sec. 11690. Suits for collection of penalties.—The township trustee shall cause suit to be instituted in the name of the township for all penalties and forfeitures given by law to such township, in all cases where no other officer is specially directed to prosecute, and he may, with the consent of the township board, employ counsel to prosecute or defend any suit to which such township is a party—such counsel fees to be paid out of the township funds not otherwise appropriated. (R. S. 1899, § 10263.)

Sec. 11691. Duties of trustee and ex officio treasurer.—He shall keep a correct account of all moneys coming into his hands by virtue of his office, from what source received, and what amount, of the amount paid out, to whom paid, and on what account, in a book to be kept by him and provided for the purpose by the township; said book to be kept in such a manner as to show the amount of money in his hands belonging to each school district or fractional part in the township, the amount of road money belonging to the township. He shall make settlement annually between the twentieth day of March and the fifteenth day of April with the county clerk of all moneys received by him on account of schools, showing how the same have been disbursed, and he shall settle with the county treasurer within twenty days after the apportionment of the school funds to the school district, and receive all money in the hands of the county treasurer belonging to his township, and receipt for the same, and shall pay all

warrants drawn on him by the board of school directors in his township out of the funds belonging to the district making the order, and he shall not pay any money out belonging to any other fund than that mentioned in the warrants, and he shall file with the township clerk on or before the day of the regular meeting of the township board in April a detailed statement of all money by him received and paid out, to whom and out of what fund, and the amount on hand, and at the expiration of his term of office he shall turn over to his successor all moneys, books and papers belonging to the office, and take duplicate receipts for the same, one to be filed with the township clerk, the other to be retained by himself. (R. S. 1899, § 10264.)

Sec. 11692. Money to be paid out only on an order of township board—school districts not affected.—The township trustee and *ex officio* treasurer shall not pay out any moneys belonging to the township for any purpose whatever, except upon the order of the township board of directors, signed by the chairman of said board and attested by the township clerk: *Provided,* that nothing in this chapter shall be so construed as to change or interfere with any school district, the boundary lines of which are different from that of the municipal township as organized under the provisions of this chapter, nor with the payment of any school moneys upon proper vouchers. He shall receive from the township collector and the county collector or treasurer all road and bridge and other taxes due the township when collected by such officers, and shall receipt for the same, and shall account therefor in like manner as for other moneys in his hands belonging to the township. (R. S. 1899, § 10265.)

Sec. 11693. Treasurer to settle annually, etc.—duty of board.—The township treasurer shall, annually, between the first day and the tenth day of July of each year, settle with the township board and account for all school moneys received, from whom and on what account, and the amount paid out for school purposes and for building purposes to the various school districts of the township. The township board shall examine the vouchers for such payments, and, if satisfied with the correctness thereof, shall certify the same, which certificate shall be *prima facie* a discharge of such liability of the treasurer for the funds expressed in the vouchers. The township clerk shall, on or before the fifteenth of July of each year, deliver to the county clerk a certified copy of said settlement, which shall constitute the required settlement by which the county clerk shall make his annual settlement with the state superintendent of public schools. (R. S. 1899, § 10266.)

ARTICLE VIII.

CLERKS AND THEIR DUTIES.

SECTION
11694. Duties of township clerk—he shall have care of records and may administer oaths to officers-elect.
11695. Township clerk to be clerk of township board.
11696. Township clerk to return to county clerk list of justices and constables-elect.
11697. Penalty of clerk's refusal to perform his duties.
11698. Copies of papers filed with township clerk to be evidence in courts of record.
11699. Books and stationery, how procured—balance due townships.

Sec. 11694. Duties of township clerk—he shall have care of records and may administer oaths to officers-elect.—The township clerk and *ex officio* assessor of each township shall have the custody and care of all records, books and papers belonging to his office; and he shall file in his office all certificates, oaths or other instruments of writing required by law to be filed in his office, and he shall have power to administer the oath of office to all township officers; and it is hereby made the duty of the township clerk to administer all necessary oaths which may be required in the transaction of any township business in the township of which he is clerk: *Provided,* that nothing herein shall be so construed as to deprive any other officer from administering said oath, as may be otherwise provided by law. (R. S. 1899, § 10267.)

Sec. 11695. Township clerk to be clerk of township board.—The township clerk shall be the clerk of the township board of directors, and shall keep a true and correct record of all official acts and proceedings of said board of directors, in a book provided for that purpose at the expense of the township, and to be kept in the office of the township clerk, subject to the inspection of any one desiring so to do, under the direction of the township clerk. (R. S. 1899, § 10268.)

Sec. 11696. Township clerk to return to county clerk lists of justices and constables-elect.—The township clerk, immediately after the election or appointment of justices of the peace and constables, and after they shall have qualified, shall return to the county clerk of their respective counties the names of such justices and constables. (R. S. 1899, § 10269.)

Sec. 11697. Penalty of clerk's refusal to perform his duties.—If any township clerk shall willfully omit or refuse to perform any of the duties required of him by this chapter, he shall be adjudged guilty of a misdemeanor, and on conviction thereof, shall forfeit to the township the sum of twenty dollars, to be collected as provided by law. (R. S. 1899, § 10270.)

Sec. 11698. Copies of papers filed with township clerk to be evidence in courts of record.—Copies of all papers, duly filed in the

office of the township clerk, and certified to be true and correct, shall be evidence in all courts of record in this state, and in all courts of inferior jurisdiction within this state, in like effect and manner as if the original were produced. (R. S. 1899, § 10271.)

Sec. 11699. Books and stationery, how procured—balances due townships.—It shall be the duty of the township clerk to procure, under the direction of the township board, and at the expense of the township, all necessary record books and other books and stationery for the use of the township. The clerk of the county court in any county having adopted township organization shall deliver to the clerk of each township therein all the records, papers, books or documents in his office that were placed in such office in pursuance of the provisions of the act repealing the township organization law, approved March 5, 1877, and it shall be the duty of the county court to issue a warrant to each and every township for an amount equal to the amount belonging to said township when said act was repealed, and any township back taxes collected for said township after said repeal, which may have been paid into the county treasury, and not appropriated for the benefit of said township since said repeal by the county court. (R. S. 1899, § 10272.)

ARTICLE IX.

BOARD OF DIRECTORS, ITS DUTIES.

SECTION
11700. Township board, by whom formed—its duties.
11701. Meetings of board, when and where held.
11702. Claims against a township, how presented.
11703. Audited accounts to be kept on file.
11704. Township charges.
11705. Money to be collected, how.
11706. President of board to be chosen by members.
11707. Claims against townships, how collected.
11708. Road labor and road tax, how apportioned.
11709. Expenses, how provided for.

Sec. 11700. Township board, by whom formed—its duties.—In each township in this state, organized under the provisions of this chapter, there shall be a board of directors, composed of the township trustee and members of the township board, whose duty it shall be: First, to audit all accounts of township officers for services rendered as such officers, except the township assessor, for services as such assessor; second, to audit all other accounts or demands legally presented to them against the township; third, to levy all taxes for township, road and bridge purposes, and all other duties provided by this chapter for the township board of directors to perform. (R. S. 1899, § 10273.)

Sec. 11701. Meetings of board, when and where held.—The township board of directors shall meet at the office of the township clerk for the purpose of transacting such business as may be by them deemed necessary, tri-annually, on the third Wednesday after the first Tuesday

in April, the first Tuesday after the first Monday in July, and on the third Monday of November of each year, and at such other times as the interest of the township may require. (R. S. 1899, § 10274.)

Sec. 11702. Claims against a township, how presented.—Any person having a claim or account against the township may file such claim or account in the office of the township clerk, to be kept by the said clerk, and laid before the township board at their next meeting: *Provided, however,* that any person having a claim against the township may present said claim to the township board himself, or by an agent at any legally convened meeting of said board; said board shall have the power to determine the legality or illegality of any claim or account against the township, and to reject said claim, or any part thereof, as to them appears just and proper; but in no case shall the township board be authorized to allow any claim, or any part thereof, until the claimant makes out a statement, verified by affidavit, to the amount and nature of his claim, setting forth that the same is correct and unpaid, or, if any part thereof has been paid, setting forth how much. (R. S. 1899, § 10275.)

Sec. 11703. Audited accounts to be kept on file.—The accounts so audited, and those rejected, if any, shall be delivered to the township clerk, to be by him kept on file, and subject to the examination of any one desiring so to do. (R. S. 1899, § 10276.)

Sec. 11704. Township charges.—The following shall be deemed township charges: First, the compensation of township officers for their services rendered in their respective townships; second, contingent expenses necessarily incurred for the use and benefit of the township; third, the moneys authorized to be raised by the township board of directors for any purpose, for the use of the township. (R. S. 1899, § 10277.)

Sec. 11705. Moneys to be collected, how.—The moneys necessary to defray the township charges of each township shall be levied on the taxable property in such township, in the manner prescribed in the general revenue law for state and county purposes. (R. S. 1899, § 10278.)

Taxes imposed by a township to defray its ordinary expenditures are "taxes for county purposes" within the meaning of the Constitution. State ex rel. v. Ry., 123 Mo. 72.

See Sec. 22, Art. X, Constitution, adopted in 1908, authorizing special tax levy by townships for road and bridge purposes.

Sec. 11706. President of board to be chosen by members.—The township board of directors shall, at their first meeting in each year after they have been elected and qualified, appoint one of their number as president of said board, who shall sign all orders and official acts of said board. (R. S. 1899, § 10279.)

Sec. 11707. Claims against township, how collected.—When any claim or account, or any part thereof, shall be allowed by the township board of directors, they shall draw an order upon the township trustee in favor of the claimant for the amount so allowed—said

order to be signed by the president of said board, and attested by the township clerk and delivered to said claimant. (R. S. 1899, § 10280.)

When the township board of directors have allowed a legal claim against the township and a warrant therefor has been issued and signed by the president and clerk, its payment can be enforced by *mandamus* against the trustee and *ex officio* treasurer. State ex rel. v. Haynes, 72 Mo. 377.

Sec. 11708. Road labor and road tax, how apportioned.—The township board of directors shall have power to divide their townships into convenient road districts, and may, at their April meeting, change the same in such manner as the interests of the township may demand. (R. S. 1899, § 10281.)

Sec. 11709. Expenses, how provided for.—The township board of directors shall make out an account of the amount of money necessary to defray the township expenses during the next ensuing year; said account shall be made out not more than sixty nor less than twenty days prior to the meeting of the county court at which the assessment for county purposes is made; said account shall be signed by the president of the board, and attested by the clerk, and filed with the clerk of the county court on or before the first day of said court, who shall cause the same to be placed upon the tax books of said township: *Provided,* that said expenses shall not, together with the amount levied for road purposes and special bridge tax, exceed in any one year twenty cents on the one hundred dollars valuation; *and provided further,* that in counties having a population exceeding thirty-five thousand inhabitants said tax shall not exceed for any one year fifteen cents on the hundred dollars valuation, and until the next decennial census shall have been taken, said population shall be determined by multiplying the aggregate number of votes cast for the respective candidates for president in 1888 in said county by five, and the product thus obtained shall determine as to such population. (R. S. 1899, § 10282.)

ARTICLE X.

OFFICERS, COMPENSATION.

SECTION		SECTION	
11710.	Pay of officers.	11712.	No township officer entitled to fees for administering official oaths.
11711.	List of officers and their pay.		

Sec. 11710. Pay of officers.—The following township officers shall be entitled to compensation at the following rates for each day necessarily devoted by them to the services of the township in discharging the duties of their respective offices. (R. S. 1899, § 10283.)

Sec. 11711. List of officers and their pay.—The township clerk, as clerk, the township trustee, as trustee, members of the township board, and judges and clerks of election, shall each receive for their services one dollar and fifty cents per day: *Provided,* that the township clerk shall receive fees for the following, and not *per diem*, for

serving notices of election [or appointment upon township officers, as required by law, twenty-five cents] each: For filing any instrument of writing, ten cents; for recording any order or instrument of writting, authorized by law, ten cents for every hundred words; for copying and certifying any record in his office, ten cents for every hundred words, to be paid by the person applying for the same; *and provided further,* that the township trustee as *ex officio* treasurer shall receive a compensation of two per cent. for receiving and disbursing all moneys coming into his hands as such treasurer when the same shall not exceed the sum of one thousand dollars, and one per cent. of all sums over said amount. (R. S. 1899, § 10284.)

Sec. 11712. No township officer entitled to fees for administering official oaths.—No justice of the peace, or other township officer, shall be entitled to any fee from any officer for administering the oath of office. (R. S. 1899, § 10285.)

ARTICLE XI.

COUNTY TREASURERS AS EX OFFICIO COLLECTORS.

SECTION
11713. County treasurer shall be collector, where—duties.
11714. Annual settlements.
11715. Suits on treasurers' bonds.
11716. Appropriation of moneys recovered.
11717. Treasurer's salary and commissions.
11718. Bonds of collectors under this article.

Sec. 11713. County treasurer shall be collector, where—duties.—The county treasurer of counties having adopted or which may hereafter adopt township organization shall be *ex officio* collector, and shall have the same power to collect all delinquent personal property taxes, licenses, merchants' taxes, taxes on railroads and other corporations, the delinquent or non-resident lands or town lots, and to prosecute for and make sale thereof, the same that is now or may hereafter be vested in the county collectors under the general laws of this State. The *ex officio* collector shall, at the time of making his annual settlement in each year, deposit the tax books returned by the township collectors in the office of the county clerk, and within thirty days thereafter the clerk shall make, in a book to be called the "back tax book," a correct list, in numerical order, of all tracts of land and town lots which have been returned delinquent by said collectors, and return said list to the *ex officio* collector, taking his receipt therefor. (R. S. 1899, § 10286.)

Under a former law, when power to sell lands was vested in county treasurer, a tax deed executed by him as collector merely was void. Callahan v. Davis, 125 Mo. 27.

Sec. 11714. Annual settlements.—At the meeting of the county court on the first Monday in March in each year, or at such other time as may be directed by law, the county treasurer shall make a full and complete settlement of his accounts, and exhibit his books and

vouchers relating to the same, which settlement of his accounts, when accepted by the court, shall be entered of record by the county clerk. (R. S. 1899, § 10287.)

Sec. 11715. Suits on treasurers' bonds.—Whenever any county treasurer shall fail or refuse to pay over the public revenue when lawfully required to do so, the county court shall cause suit to be prosecuted on his bond, and the state auditor shall have the same power to prosecute suit against county treasurers on a copy of their bond as is allowed by law for prosecuting suits against county collectors. (R. S. 1899, § 10288.)

Sec. 11716. Appropriation of moneys recovered.—All moneys recovered in any such action shall be paid or appropriated for the use contemplated or directed by law. (R. S. 1899, § 10289.)

Sec. 11717. Treasurer's salary and commissions.—The county treasurer in counties adopting [township] organization shall be allowed a salary by the county court as at present provided by law; the county collector for collecting and paying over the same shall be allowed a commission of two per cent. on all corporation taxes, back taxes, licenses, merchants' tax and tax on railroads, and five per cent. on all delinquent taxes, which shall be taxed as costs against such delinquents and collected as other taxes: *Provided,* he shall receive nothing for paying over money to his successor in office. (R. S. Mo., 1909, § 11717, amended, Laws of Mo., 1911, p. 425.)

ARTICLE XII.

REVENUE, ASSESSMENT AND COLLECTION OF.

SECTION		SECTION	
11719.	Lists of personal and real estate, how made out.	11732.	Compensation of assessors.
11720.	State, county, township, school, bridge and other tax.	11733.	Manner of collecting taxes.
11721.	Assessment roll deliverable to collector.	11734.	Levy and sale of goods and chattels in case of refusal to pay tax.
11722.	Warrant to be annexed to roll.	11735.	Proceedings incident to sale.
11723.	Warrant shall authorize, what.	11736.	When property sells for more than the tax, overplus to be returned to whom.
11724.	Township collector to make settlement, when — penalty for failure, and procedure.	11737.	In case of removal, collector may levy on property of persons owing taxes wherever same may be found in the county.
11725.	Auditor's instructions to county clerk.	11738.	Collector's settlements, how made —collector's commissions—penalty.
11726.	Assessment of property.	11739.	Surplus tax money, how held.
11727.	Property to be assessed, how and where.	11740.	Collector's credit for uncollectible assessments, how made.
11728.	Assessor to take oath.	11741.	School taxes, how collected.
11729.	Assessment, how made.		
11730.	Assessor's tax book, how made out.		
11731.	Assessment lists to be filed with county clerk.		

Sec. 11719. Lists of personal and real estate, how made cut.—It shall be the duty of the county clerk of each county in this state,

that has or hereafter may adopt township organization, to make out annually, for the use of the township collector of each township, correct lists of the property assessed, which lists shall be in alphabetical order, the names of the persons owing tax on personal property in each collector's district, the aggregate value of such property assessed to each person, and the amount of taxes due thereon. He shall also make out for the use of the township collector an abstract of all real property which is assessed, in numerical order, which shall show the name or names, if known, of the person or persons to whom each tract or lot is assessed, and the value of each tract or lot, and the amount of taxes due thereon, which list shall be made out in strict conformity with the forms and instructions furnished by the state auditor. (R. S. 1899, § 10292.)

A tax levied by the township board but not authorized by the county court is invalid, though the county clerk extended same on the township tax book. Henry v. Bell, 75 Mo. 194. County is not liable for compensation of county clerk for making tax book for township. State ex rel. v. Holliday, 61 Mo. 524.

Sec. 11720. State, county, township, school, bridge and other tax. The county clerk shall cause to be estimated and set down in separate columns, to be prepared for that purpose, in the copied assessment roll, opposite the several sums set down as the valuation of real and personal estate, the respective sums, in dollars and cents, to be paid as taxes thereon, stating separately the amount of state, county, township, school, bridge and other tax. (R. S. 1899, § 10293.)

Sec. 11721. Assessment roll delivered to collector.—The county clerk shall cause a copy of the assessment roll of each township in their respective counties, with the taxes extended thereon, to be delivered to the collector of such township, on or before the day in each year, as fixed by law, when taxes become due. (R. S. 1899, § 10294.)

Sec. 11722. Warrant to be annexed to roll.—To each assessment roll a warrant under the hand of the county clerk and seal of the court shall be annexed, commanding such collector to collect from the several persons named in the assessment roll the several sums mentioned in the last columns of such roll, opposite their respective names; the warrant shall direct the collector, out of the moneys collected, after deducting the compensation to which he may be lawfully entitled, to pay over to the county treasurer the state and county tax collected by him. He shall pay over to the township treasurer all school moneys collected by him, and all moneys collected for township expenses, and all moneys collected for road and bridge purposes. (R. S. 1899, § 10295.)

Sec. 11723. Warrant shall authorize, what.—In all cases the warrant shall authorize the collector, in case any person named in such assessment roll shall neglect or refuse to pay his tax, to levy the same by distress and sale of the goods and chattels of such person, and it shall require all payments therein specified to be made by the day fixed by law for the delivery of the tax book to the county treasurer. The county clerk shall notify the county treasurer that said books are completed, and shall furnish the treasurer with a statement

setting forth the name of each collector, the amount of money to be collected and paid over for each purpose for which the tax is levied in each of the several townships. (R. S. 1899, § 10296.)

Sec. 11724. Township collector to make settlement, when—penalty for failure and procedure.—The township collector of each township shall, at the term of the county court to be held on the first Monday in March of each year, make a final settlement of his accounts with the county court for state, county, school and township taxes and produce receipts from the proper officers for all school and township taxes collected by him, less his commission on same, at which time he shall pay over to the county treasurer and *ex officio* collector all moneys remaining in his hands, collected by him on state and county taxes, and shall at the same time make his return of all delinquent or unpaid taxes, as required by law, and shall make oath before said court that he has exhausted all the remedies required by law for the collection of said taxes. He shall also, on or before the twentieth day of March in each year, make a final settlement with the township board. If any township collector shall fail or refuse to make the settlement required by this section, or shall fail or refuse to pay over the state and county taxes, as provided in this section, the county court shall attach him until he shall make such settlement of his accounts or pay over the money found due from him; and it shall be the duty of said court to cause the clerk thereof to notify the state auditor and the prosecuting attorney of said county at once of the failure of such township collector to settle his accounts, or pay over the money found due from him, and the state auditor and the prosecuting attorney shall proceed against such collector in the manner provided in section 11738 of these statutes, and such collector shall be liable to the penalties in said section imposed. (R. S. 1899, § 10297, amended, Laws 1907, p. 448.)

Sec. 11725. Auditor's instructions to county clerk.—It shall be the duty of the state auditor to make out and forward to the county clerks of the several counties that have or may hereafter adopt township organizations for the use of such county clerks and other officers, suitable forms and instructions relating to the discharge of their duties, and all such instruction shall be strictly complied with by said officers; he shall give his opinion and advice on all questions of doubt as to the true intent and meaning of the law pertaining to township organization. (R. S. 1899, § 10298.)

Sec. 11726. Assessment of property.—All personal property shall be assessed annually; real property shall be assessed as provided by law. (R. S. 1899, § 10299.)

Sec. 11727. Property to be assessed, how and where.—All real property shall be assessed in the township in which the same is situated, with the owner's name thereof, if known; if the owner's name is not known, then it shall be assessed as non-resident. (R. S. 1899, § 10300.)

Sec. 11728. Assessor to take oath.—Every assessor, before he enters upon the duties of his office, shall take and subscribe an oath

that he will, according to the best of his judgment, skill and ability, diligently, faithfully and impartially discharge the duties enjoined upon him as such assessor. (R. S. 1899, § 10301.)

Sec. 11729. Assessment, how made.—The assessor, or some suitable person empowered by him, shall, within the time prescribed by law, and after being furnished with the necessary blanks, proceed to take a list of the taxable property of his township and assess the value thereof in accordance with the provisions of the general laws of this state in relation to the assessment of real and personal property by county assessors, in all things pertaining to the discharging of his official duties, except when the same may be inconsistent with the provisions of this article: *Provided,* that his compensation shall be such as is prescribed in this article for his services. (R. S. 1899, § 10302.)

Sec. 11730. Assessors' tax books, how made out.—Each *ex officio* township assessor shall, on or before the time prescribed by the general law, make out and deliver to the county clerk of his county, in tabular form and alphabetical order, in a book to be furnished by the county, the names of the several persons, companies or corporations in whose name any personal property, money or credits shall have been listed in his township, and in appropriate columns, opposite each name, the number and value of all articles of personal property listed according to law, and he shall in like manner, after having listed and valued the real estate in his township, make out and deliver to the county clerk of his county the assessment of all the lands and town lots within his township, properly entered in a land book to be furnished by the county, and to be made out in such form as is prescribed in the general law in relation to county assessors. (R. S. 1899, § 10303.)

Sec. 11731. Assessment lists to be filed with county clerk.—He shall file with the county clerk, in alphabetical order, within the time prescribed by law, all of the assessment lists taken by him, which lists shall be kept by the clerk as now provided by law: *Provided,* that all necessary blank lists, books and stationery shall be furnished by the county clerk, to be paid for out of the county treasury. (R. S. 1899, § 10304.)

Sec. 11732. Compensation of assessors.—He shall receive, as compensation for his services, fifteen cents for each list taken by him; and for each tract of land or town lot assessed by him, and properly entered in the township land book, he shall receive ten cents, one-half to be paid by the county and one-half by the state, as now provided by law: *Provided,* that all the personal property listed belonging to any one individual, or company, or firm, shall constitute only one list, and all the land owned by the same person in any one section shall constitute but one tract, and all the land owned by the same person in any one block shall constitute but one lot, as to compensation. (R. S. 1899, § 10305.)

Sec. 11733. Manner of collecting taxes.—Every *ex officio* township collector, upon receiving the tax book and warrant from the county clerk, shall proceed in the following manner to collect the

same; and he shall call at least once upon the person taxed at his or her place of residence, if in the township for which such collector has been chosen, and shall demand payment of the taxes charged to him or her, on his or her property; for which, when paid, such receipt shall be given as is provided by law. (R. S. 1899, § 10306.)

Sec. 11734. Levy and sale of goods and chattels in case of refusal to pay tax.—In case any person shall refuse or neglect to pay the tax imposed, the collector shall levy the same by distraint and sale of the goods and chattels of the person who ought to pay the same. (R. S. 1899, § 10307.)

Sec. 11735. Proceedings incident to sale.—The collector shall give public notice of the time and place of sale, and of the property to be sold, at least fifteen days previous to the sale, by advertisement to be posted up in at least three public places in the township where such sale is to be made. The sale shall be by public auction. (R. S. 1899, § 10308.)

Sec. 11736. When property sells for more than the tax, overplus to be returned, to whom.—If the property distrained be sold for more than the amount of taxes and costs, the surplus shall be returned to the owner or the person in whose possession such property was when the distraint was made. (R. S. 1899, § 10309.)

Sec. 11737. In case of removal, collector may levy on property of persons owing taxes wherever same may be found in the county.—In case any person, upon whom any tax shall be assessed under the provisions of this chapter, in any township, shall have removed out of such township after such assessment, it shall be lawful for the collector of such township to levy and collect such tax off of the goods and chattels of the person assessed, within any township or city of the county in which said person may have removed, or in which he shall reside. (R. S. 1899, § 10310.)

Sec. 11738. Collector's settlements, how made—commissions—penalty.—The township collector shall, on or before the fifth day of each month, make out and file in the office of the clerk of the county court a statement, in writing, showing the amount of taxes collected by him for state, county, school, road, township and all other purposes during the preceding month, which statement shall be sworn to by such township collector before the county clerk, or some other officer authorized to administer oaths. On or before the tenth day in each month the township collector shall, after deducting his commissions, pay over to the county treasurer and *ex officio* collector all state and county taxes collected by him during the preceding month, as shown by the sworn statement required by this section, and take duplicate receipts therefor, one of which he shall retain and the other he shall file with the county clerk; and the county clerk shall charge the treasurer with the amounts so receipted for, to be accounted for at the annual settlement; and the township collector shall, in like manner, on or before the twentieth day of each month, pay over to the township trustee and *ex officio* treasurer, after deducting his commission, all township taxes and funds of every kind belonging to said township,

collected by him during the previous month, and take duplicate receipts therefor, one of which he shall retain and the other he shall deposit with the township clerk, and the township clerk shall charge the township trustee and *ex officio* treasurer with the amount so receipted for; and the township collector shall likewise make annual settlement with the township board on or before the twentieth day of March in each year. He shall receive a commission of two and one-half per cent. on all moneys collected by him. If any township collector shall fail or refuse to file the statement required by this section, or, having filed such statement, shall neglect or refuse to pay over to the county treasurer and *ex officio* collector the state and county taxes collected by him during the previous month, as shown by said statement, the county clerk shall, immediately after such default, and not later than the fifteenth day of the month in which such statement was or should have been made, certify such fact to the state auditor and the prosecuting attorney of the county; and the state auditor and prosecuting attorney shall proceed against such defaulting township collector in the same manner as is provided by section 11474 for proceeding against defaulting county collectors or *ex officio* county collectors, and the said township collector shall forfeit his commission on all moneys collected and wrongfully withheld, and otherwise be liable to all the penalties imposed by said section 11474. Any county clerk failing to perform any of the duties devolving upon him by virtue of this section shall be liable to all the penalties inflicted by section 11474 for failing to perform the duties enumerated in sections 11474 and 11475; and it shall be the duty of the county clerk to certify a copy of such monthly statement to the state auditor within the time prescribed for certifying the statements of the county collectors and *ex officio* collectors; *and provided further,* that it shall be the duty of the *ex officio* collector to include in his monthly statement all such sums collected for the previous month as may have been paid to him by the township collectors up to the time of making his monthly statement, and not included in any previous statements; *and provided further,* that the *ex officio* collector shall include in his annual statements, as provided for in this chapter and in the general revenue law, the whole amount of taxes collected by the several township collectors of his county, as shown by the annual settlements of such township collectors with the county court as herein provided for. (R. S. 1899, § 10311.)

Sec. 11739. Surplus tax money, how held.—Whenever any greater amount of taxes shall be assessed in any township than the township charges thereof, and its proportion of tax and county charges, the surplus shall be paid by the collector to the trustee of the township, who shall hold the same until needed to pay township expenses. (R. S. 1899, § 10312.)

Sec. 11740. Collector's credits for uncollectible assessments, how made.—If the township collector shall be unable to collect any taxes charged in the tax list, by reason of the removal or insolvency of the person to whom such tax may be charged, or on account of any error

in the tax list, he shall deliver to the county treasurer his tax book, and shall make out and file with said treasurer, at the time of his settlement, a statement in writing, setting forth the name of the person charged with such tax, the value of the property, and the amount of tax so charged and the cause of the delinquency, and shall make oath before the county clerk, or some justice of the peace, that the facts stated in such statement are true and correct, and that the sums mentioned therein remain unpaid, and that he used due diligence to collect the same, which oath or affidavit shall be signed by the township collector; and upon filing said statement, the county treasurer shall allow the township collector credit for the amount of taxes therein stated, and shall apportion and credit the same on the several funds for which such tax was charged; and when he makes settlement with the county court, such statement shall be a sufficient voucher to entitle him to credit for the amount therein stated; but in no case shall any township collector, or county treasurer, be entitled to abatement on the resident tax list until the statement and affidavit aforesaid are filed as required by his chapter. (R. S. 1899, § 10313.)

Sec. 11741. School taxes, how collected.—The township collector shall be required to draw or procure a plat of each school district or fractional part thereof in his township, and shall keep a true and correct account of all school moneys collected by him in each school district or fractional part thereof; and when said collector pays the moneys so collected by him to the township treasurer, he shall state the amount collected from each school district or fractional part thereof, and take duplicate receipts therefor, one of which he shall retain, and file the other with the township clerk. As soon as the school funds are apportioned, the township treasurer shall apply to the county treasurer for the school moneys belonging to each school district or fractional part thereof, in his township, and the county treasurer shall pay over to him all of said school money, taking duplicate receipts therefor, one of which he shall file with the township clerk. The township treasurer shall safely keep such money until paid out upon the order of the board of directors of the various school districts in his township. When any school district is divided by township or county lines, the district shall be considered in the township or county in which the schoolhouse is located, and the township treasurer holding any money belonging to fractional parts of districts in which no schoolhouse is located shall pay over all such money to the township treasurer of the township in which the fractional part of the district having the schoolhouse is located, taking duplicate receipts therefor, one of which shall be filed with the township clerk, and the township treasurer shall settle annually with the township board on or before the twentieth day of March in each year. (R. S. 1899, § 10314.)

The township may maintain suit on the bond of township trustee for school funds received by him and not turned over to his successor. Salem Twp. v. Cunningham, 45 A. 614.

ARTICLE XIII.

SPECIAL PROVISIONS.

SECTION		SECTION	
11742.	Clerk to be notified of his election.	11746.	Board compelled to allow appeal, when.
11743.	Tax levy, how made in certain counties.	11747.	County board of equalization, how constituted.
11744.	Collection of taxes, how made.	11748.	Rules to be observed—notice to property owners.
11745.	Township organization may be abolished, how.		

Sec. 11742. Clerk to be notified of his election.—At the first township election held in any new township formed in any county, or at the first township election to elect township officers after any county shall have adopted the township organization law of this state, the township clerk elected at such election shall be immediately notified of his election by the judges of election, and said clerk shall immediately qualify and enter upon his duty as such clerk. (R. S. 1899, § 10315.)

Sec. 11743. Tax levy, how made in certain counties.—In all counties having adopted or which may hereafter adopt township organization, wherein the last previous annual assessment shall have been made and returned in separate books for each township, or separated into townships on the assessors' books, township taxes for township purposes may be levied on the taxable property in all such townships for the first year following the adoption of township organization in such counties, based on such assessment, and in the same manner that is now provided by law for the levy of township taxes, and the tax books in all such counties shall be made out in township books and such township taxes extended thereon. (R. S. 1899, § 10316, amended, Laws 1907, p. 447.)

Sec. 11744. Collection of taxes, how made.—In all counties having adopted or which may hereafter adopt township organization, the county collector shall continue to be the collector for such county or counties until after the assessment shall have been made by the township assessor, as provided by chapter 119 of the Revised Statutes of Missouri of 1909, and the tax bills and tax books shall be delivered to the township collectors, as required by provisions of said chapter: *Provided, however,* that in all such counties wherein the last annual assessment prior to the adoption of township organization shall have been made out and returned by the assessor in separate books for each township or separated into townships on the assessors' books, the foregoing provisions of this section shall not apply, and in all such counties the tax books shall be made in township books and delivered to the township collectors and the revenue in such counties collected as provided by chapter 119 aforesaid: *Provided further,* that in counties in which, at the general election in 1906, county collectors were elected and township organization adopted, such col-

lectors shall have the right to exercise the functions and receive the fees of said office until the first Monday of March, 1908; *and provided further,* that during the continuance of such county collectors in office, they shall pay over to the several township trustees of said county, after deducting their commissions, all township taxes and funds of every kind belonging, respectively, to the said several townships, as required by section 11738, Revised Statutes, 1909, in the case of township collectors. (Laws 1907, p. 447.)

Sec. 11745. Township organization may be abolished, how.—At any general election holden in this state, in any county having adopted township organization under this chapter, upon the petition of one hundred voters of the county, praying the county court to resubmit the question of township organization to the voters at said election, it shall be the duty of the county court to submit the question again at such election, in like manner as provided in article I of this chapter; and if it shall appear, after the canvass of the votes as provided in article I of this chapter, that a majority of all the votes cast at said election were against township organization, then such county shall be declared to be under the general laws of the state in relation to its local government, and to have rejected township organization, and the county court shall, at the first meeting thereafter, appoint such county officers as provided by law in counties not under township organization, and such officers, when so appointed, shall hold their offices and discharge the duties thereof in like manner as officers elected in counties never having adopted the provisions of this chapter. (R. S. 1899, § 10317.)

When a vote is taken upon a petition to abolish township organization, since the amendment of Sec. 11655 in 1897, and a majority of the votes cast are in favor of township organization, such organization is thereby legalized, though it had not been previously adopted in the manner required by the Constitution. State ex inf. Russell, 197 Mo. 633.

See Sec. 8, Art. 9, Const., as amended in 1902, and Sec. 11655, as amended in 1903.

Sec. 11746. Board compelled to allow appeal, when.—In all counties in this state that have adopted or that may hereafter adopt township organization, if any township board, clerk or other officer thereof fail to allow an appeal in the cause when the same ought to be allowed, or if by absence, sickness or any other cause on his part, an appeal cannot be taken within time, the circuit court or other court having jurisdiction of such appeal, or judge thereof in vacation, on such fact satisfactorily appearing, may, by rule and attachment, compel such board or other officer to allow the same, and to return his proceedings in the suit, together with the papers required to be returned by him. (R. S. 1899, § 10318.)

As this section affords ample remedy to compel the allowance of an appeal, *mandamus* will not lie to secure such appeal. Tyler v. Board, 75 A. 561.

Sec. 11747. County board of equalization, how constituted.—There shall be in each county in this state, except the city of St. Louis, a county board of equalization, which board shall consist of the county clerk, who shall be secretary of the same, but have no vote, the

county surveyor, the judges of the county court, and the county assessor, which board shall meet at the office of the county clerk on the first Monday in April of each year: *Provided,* that in any county having adopted township organization, the sheriff of said county shall be a member of said board of equalization. (R. S. 1899, § 10319.)

See notes under Sec. 11748.

Sec. 11748. Rules to be observed—notice to property owners.—The following rules shall be observed by county boards of equalization: First, they shall raise the valuation of all such tracts or parcels of land and any personal property as in their opinion have been returned below their real value, according to the rule prescribed by this article for such valuation; but after the board shall have raised the valuation of such real estate, it shall give notice of the fact, specifying the property and the amount raised, to the persons owning or controlling the same, by personal notice through the mail, or by advertisement in any paper published in the county, and that said board will meet on the fourth Monday in April to hear reasons, if any may be given, why such increase should not be made; second, they shall reduce the valuation of such tract or parcels of land, or any personal property, which, in their opinion, has been returned above their true value as compared with the average valuation of all the real and personal property of the county. (R. S. 1899, § 10320.)

Historical note.—Secs. 11747 and 11748 were part of the general revenue law in 1879 (R. S. 1879, Secs. 6671 and 6673). They were amended in 1887 (Laws 1887, p. 232), and in 1889 inserted substantially as amended in both the general revenue law and township organization law (R. S. 1889, Secs. 7517 and 7519, and 8519 and 8520). As found in the township organization law of 1889, they seem to have been included in a revised bill, the word "act" being changed to read "article," in which form they continue as above. These sections, as amended, since 1889, appear as Secs. 11402 and 11404 of the general revenue law.

Construction.—The board of equalization is not required to give notice of its intention to raise the valuation of property, but notice must be given to the owner of property after its value has been raised. State ex rel. v. Baker, 170 Mo. 194. While notice is indispensable to a valid increase in the valuation of property, the notice prescribed by this statute amounts to a "due process of law" within the meaning of the Constitution. State ex rel. v. Springer, 134 Mo. 212.

See, also, cases cited under Secs. 11402 and 11404.

ARTICLE XIV.

ROADS, HIGHWAYS AND BRIDGES.

SECTION		SECTION	
11749.	Roads, how located.	11754.	Overseer shall make report to and make settlement with board.
11750.	County court shall appoint highway engineer, his duty and power.	11755.	Shall not enter into contract with or employ any member of own family or board—tools.
11751.	Township to be divided into road districts—overseers to be appointed—vacancies.	11756.	Duties of overseer—shall file list of able-bodied citizens.
11752.	Overseer shall be citizen of township—compensation.	11757.	Duties of the township clerk—poll tax book.
11753.	Overseer shall give bond.		

SECTION
11758. Board to make levy of poll tax for road purposes.
11759. Poll taxpayers to be notified when to work—may pay in money.
11760. Clerks to supply overseers with notices and receipts—forms.
11761. Overseers to collect poll tax—shall make detailed statement.
11762. Where and when men shall be worked.
11763. Who exempt from road work.
11764. Road to be worked whenever necessary.
11765. Poll taxpayers may be prosecuted for failure to work or pay poll tax.
11766. Prosecuting attorney shall prosecute.
11767. Board shall assess property.
11768. Township collector to collect road tax—power of collector.
11769. Additional tax of twenty-five cents on hundred dollars for roads and bridges may be levied in any county.
11770. How collected and for what used.
11771. County court to cause delinquent road tax list to be levied upon lands.
SECTION
11772. Township clerk to certify rate of taxation, when.
11773. Board shall construct and repair all bridges, when.
11774. Board to furnish county court estimates on bridges costing over $100.
11775. Adoption of the contract system.
11776. Letting of contract, etc.
11778. Duties of contractors—liable on bond.
11779. Board shall have power to cause grading or repairing of roads.
11780. Board may make appropriation for repairs.
11781. Board shall keep record of money received and disbursed—to keep list of road tools.
11782. Guideboards.
11783. Gauge posts.
11784. Drainage—taking material.
11785. County court may appropriate funds, when.
11786. County court may authorize plats to be made—to be filed—expenses paid, how.
11787. Prosecuting attorney to prosecute all actions.
11788. Penalty.

Sec. 11749. Roads, how located.—All public and private roads in counties under township organization shall be located, established, opened, changed, widened, relocated or vacated in the same manner as now or may hereafter be prescribed by law for counties not under township organization. The county court may, for the purpose of convenience to the persons interested, and to reduce the expense of hearings on road petitions when the same is contested, hold such hearings at any point in the county most convenient for that purpose, and shall receive the same mileage and *per diem* as if holding court at the county seat, and the clerk of the county court, or his deputy, shall attend such session, and his actual expenses for attendance taxed as other costs in such hearings. (Laws 1909, p. 870.)

For laws governing the opening, changing and vacating of public roads, see Secs. 10433 to 10446 and cases cited thereunder.

Sec. 11750. County court shall appoint highway engineer, his duty and power.—In all counties that have adopted, or that may hereafter adopt township organization, the county court shall appoint a county highway engineer for such county, as provided by the law creating such officer, who shall have direct supervision over all public roads in the county and over the road overseers of the several townships. He shall also have the supervision over the construction and maintenance of all culverts, bridges and roads, and it shall be the duty of the county highway engineer to give assistance and advice on road matters to the township road authorities whenever requested so to do by such

officials, and it shall be the duty of all road overseers to follow the advice and direction of the county highway engineer so far as the funds in their hands will permit. No township board shall issue warrants in payment for work done under contract until the claim therefor shall have been examined and approved by the county highway engineer: *Provided,* this provision shall not apply to work or expenditures amounting to less than twenty-five dollars. (Law 1909, p. 870.)

Sec. 11751. Township to be divided into road districts—overseers to be appointed—vacancies.—The township board of directors shall divide the township into convenient road districts, and on or before the twentieth day of March of each year shall appoint a road overseer for each district, who shall serve for one year and until his successor is appointed and qualified. Any overseer may be removed from office by the township board for incompetency, neglect of duty or other good cause. Whenever a vacancy shall occur in the office of road overseer, the same shall be filled by appointment by the township board for the unexpired term. (R. S. Mo. 1909, § 11751, amended, Laws Mo. 1911, p. 426.)

Sec. 11752. Overseer shall be citizen of township—compensation. The person appointed to the office of road overseer shall be a citizen of the township from which he is appointed, and his compensation shall be fixed by the board of directors at the time of his appointment, and shall be not more than twenty-five cents per hour for each hour actually and necessarily employed as such overseer. (Laws 1909, p. 870.)

Sec. 11753. Overseer shall give bond.—Before entering upon the performance of his duties each road overseer shall execute and deliver to the township board a bond in such sum as may be fixed by the board, and with good and sufficient security, to be approved by the board, conditioned that he will faithfully discharge all the duties devolved upon him by law as such overseer. (Laws 1909, p. 870.)

Sec. 11754. Overseer shall make report and make settlement with board.—It shall be the duty of every road overseer to make a detailed report and settlement, under oath, to the township board, at each regular meeting thereof, and on or before the twentieth day of March next after his appointment he shall make final report, under oath, of all moneys received and expended by him, and from what source received and on what account expended, and final report of the disposition of all tools, machinery, books, papers and other property received by him as such overseer and belonging to such township or road district, and shall settle in full with said board for all money which he may have belonging to such road district or which may be owing by him to such district, and shall deliver to said board all tools, machinery, books, papers and other property belonging to such township or road district and received by him as such overseer. (Laws 1909, p. 870; amended, Laws Mo. 1911, p. 426.)

Sec. 11755. Shall not enter into contract or employ any member of own family or board—tools.—The overseer shall not employ any member of the township board nor enter into any contract for road work, material, tools, teams, nor purchase any machinery or material

for the use of the road district from any member of the board or a member of his own family, either directly or indirectly, nor in any way use the funds of the district so as to become the beneficiary in the disbursement of the same. The tools of the district shall not be loaned to any person. (Laws 1909, p. 870.)

Sec. 11756. Duties of overseer—shall file list of able-bodied citizens.—It shall be the duty of the road overseer to keep the roads in his district in as good repair as the funds at his command will permit. He shall keep a full and correct record of all moneys received and disbursed, and also shall keep an inventory of all tools, machinery and other property belonging to the district. It shall be the duty of each overseer, during the month of March, to prepare a list, alphabetically arranged, of all able-bodied male citizens of his district between the ages of twenty-one and fifty years who reside in his district, and he shall file said list with the township clerk of his township on or before the first day of April following, and the board of directors shall not approve the final settlement of any overseer nor pay to him any money that may be owing to him upon such settlement, on account of services or otherwise, nor allow him any credit therefor, until said list shall have been prepared and filed by such overseer in accordance herewith. (Laws 1909, p. 870.)

Sec. 11757. Duties of the township clerk—poll tax book.—On or before the 15th day of April of each year the township clerk shall copy the list of names furnished him by the road overseer of the several districts, numerically arranged, on a separate tax book, to be known as the poll tax book, and shall extend opposite each name the poll tax as levied by the township board, and he shall furnish the overseer with a copy of such poll tax list. The township clerk shall procure, at the expense of the township, a sufficient number of receipt books as hereinafter provided and deliver the same to the overseers of the several road districts of the township on or before the 15th day of April of each year. All persons, firms and corporations are hereby required, on application of the road overseer of his or its district, to furnish to said road overseer the number of persons in his or its employment who are liable to the payment of road tax under the provisions of this article, and in the event of a willful refusal, failure or neglect to do so within ten days after such demand, in writing, shall forfeit and pay to the township the sum of one hundred dollars for such refusal, failure or neglect to do so, such sum to be recovered by the overseer, in the name of the road district, as in other civil actions brought or maintained in any court of competent jurisdiction, and when collected such money shall be paid into the county school fund. (Laws 1909, p. 870.)

Sec. 11758. Board to make levy of poll tax for road purposes. The township boards in the several counties shall, at the regular April meeting, levy, for road purposes, upon every able-bodied male inhabitant in the several road districts in the township over twenty-one and under fifty years of age, except persons residing within incorporated cities, towns and villages, a poll tax of not less than three dollars nor

more than six dollars. Persons subject to poll tax for road purposes shall have the right, at their election, to pay the same in money or labor within their respective road districts, and, if in labor, at the rate of fifteen cents per hour for a hand, or thirty cents per hour for a hand and team: *Provided,* that no poll taxpayer shall be exempt from the payment of the poll tax or any part of the same assessed against him on account of any mistake or defect in the warning notice to work the road when served upon him; *and provided further,* that in townships that have adopted or hereafter adopt the contract system of working roads, as provided by this article, all poll taxes shall be paid in money. (R. S. Mo., 1909, § 11758, amended, Laws Mo., 1911, p. 429.)

Sec. 11759. Poll taxpayers to be notified when to work—may pay in money.—It shall be the duty of the overseers of the several road districts to notify each resident poll taxpayer in his district, at the time he first warns him out to work, of the amount of poll tax due, and give the said poll taxpayer an opportunity to pay the tax in money or labor, and if the poll taxpayer elects to pay same in labor, then he must perform the work in his road district at the time and place designated by said overseer when warned out to work the road: *Provided,* that when said poll taxpayer is warned to work out his poll tax, and fails to do so at the time and place required by the overseer, and fails to pay the same in money within ten days, the amount may be recovered by a suit in the name of said road district before any justice of the peace of the county, and no property shall be exempt from seizure and sale under judgment and execution for any property or poll tax assessed against any poll taxpayer in any road district in any township of this state. (Laws 1909, p. 870.)

Sec. 11760. Clerks to supply overseers with notices and receipts—forms.—On the 15th day of April of each year the township clerk shall deliver to each road overseer of the township two books, one containing warning notices to work the road, and the other receipts for poll tax paid, the said notices and receipts to be of a sufficient number for every poll taxpayer of the district, and said notices to be printed on different colored paper from that used in the receipts, and said notices and receipts each having a blank stub or memorandum attached thereto, to be filled out, dated and signed by the road overseer, or some one authorized by him, in writing. Such notice and receipt shall be in the following form:

NOTICE TO WORK ROADS.

Warning notice No.....	Date.....19..
District No.....	Receipt No.....
..... township,	Road district No.....
.....county, Mo.	..... township,
To	.....county, Mo.
Time to commence work.....a. m.	Received of .....
Date warned out.....	(labor
....., 19..	in $.....for poll
Given by.....	(cash
Poll tax.....	tax, for year 19.....

Warning notice No.....
District No.....
..... township,
....:.....county, Mo.
To.....appear for work on road near....
at....a. m. on.....the.....day
of....., 19..
Amount poll tax due $....., payable in labor at time and place above stated, or in cash within ten days from the giving of this notice.

....., Overseer.

RECEIPT.

Date....., 19..
Receipt No.....
Road district No.....
..... township,
.....,.....county, Mo.
Received of .....
in { labor / $..... / cash } for poll tax for year 19..

....., Road Overseer.

(Laws 1909, p. 870.)

Sec. 11761. Overseers to collect poll tax—shall make detailed statement.—The road overseer shall give his receipt to the township clerk for the aggregate amount of all poll tax as shown by the poll tax book to be due from his district, and shall be charged therewith. The road overseer shall proceed to collect the amounts shown to be due by such poll tax book in labor or money, and when the amount due from any poll taxpayer is fully paid, he shall deliver a receipt to the person entitled thereto and credit such payment in the poll tax book. On November first of each year the road overseer shall return the poll tax book to the township clerk, and shall be credited with the amount as shown by the poll tax book to be delinquent, if it shall appear from the affidavit of such overseer, filed with such delinquent list, that he has used all means provided by law to collect such poll tax but has been unable so to do; otherwise said overseer shall stand charged with such uncollected balance, and shall account for same at his next or final settlement with the board. Before any overseer shall be finally discharged from his final settlement, he shall make out a detailed statement, showing the amount collected by him from each person, whether in labor or cash, and a detailed statement of all disbursements, and shall pay any sum in his hands to the township treasurer, who shall receipt for same and place it to the credit of the road district for which it was collected. (Laws 1909, p. 870.)

Sec. 11762. Where and when men shall be worked.—The road overseers of the various road districts shall, so far as practicable, work men upon the road nearest their own premises, but this section shall not be so construed as to prevent road overseers from working men anywhere in the road district. All grading and general road work or improvements, except in the opening of new roads or work made necessary by a relocation or change of road, shall be done prior to August first of each year: *Provided, however,* this section shall not be construed as preventing the building of bridges, culverts and approaches thereto, or the opening of drains and removal of obstruction and other special work after August first. (Laws 1909, p. 870.)

Sec. 11763. Who exempt from road work.—In working a road district, if the road overseer finds living within his district able-bodied men of the proper age to work the road, not exempt by the township board, whose name or names do not appear upon the list turned over to him by the township clerk, and who have not paid their poll tax

for the year in full, either in money or labor, in some other road district in the state, and for which they shall produce a receipt, he shall place the name or names of such person or persons upon his list, and proceed to collect a poll tax from such person or persons in the same manner as if their names had been primarily listed with him. All men between the age limits, as specified in this article, shall be considered able-bodied unless exempted by the township board, and such exemption shall be for life, or for a specified time, as in the judgment of the board may be right and proper. All applicants for such exemption shall be examined by a physician, when the board deems it necessary, and by the members of the board if they see fit, and, after such examination, the board may authorize the clerk of said board to issue to such applicant a certificate of such exemption, in accordance with the provisions of this article. When exemptions are granted, the township clerk shall keep a record of same and when the same expires. No man shall be permitted to set up the fact that he is not an able-bodied man, in defense to any action brought against him for the non-payment of his poll tax, unless he has in force at the time the suit is brought an exemption granted by the township board. (Laws 1909, p. 870.)

Sec. 11764. Road to be worked whenever necessary.—As often as any road shall need repairing or any obstructions to be removed therefrom, the overseer of the proper district shall call out the necessary hands in his district and repair the same or remove such obstruction. The overseer may credit any person in his road district from whom labor is due for repairs made on the road actually needed for the convenience of travel. A written or printed notice as provided by section 11760 to any one subject to poll tax by the overseer himself, or by any person having authority from the overseer, or such written or printed notice left at the usual place of abode of such person with some member of his family or household over the age of fifteen years, at least two days before the time such person is required to work, shall be a sufficient notice. (Laws 1909, p. 870.)

Sec. 11765. Poll taxpayers may be prosecuted for failure to work or pay poll tax.—Every able-bodied man against whom has been levied a poll tax for road purposes as provided in this article, and who has been legally warned out to work the road and who fails to respond and work out said poll tax, at the time and place required by the overseer, or who shall fail to pay the same in cash within ten days after such warning notice has been served upon him, may be sued in the name of the road district in which he is liable for said poll tax. And it shall be the duty of the road overseer of each road district to file a list of all able-bodied men delinquent, as so declared by this act, and the amount of poll tax that each owes, before some justice of the peace of the county, not later than the tenth day of October of each year, for suit against each delinquent poll taxpayer upon said list for the amount he owes said road district. The justice of the peace and constable, in all such suits, shall receive the same fees as are allowed by law in other civil actions: *Provided, however,*

that in no case shall the township or road district be liable for any costs in such suits. (Laws 1909, p. 870.)

Sec. 11766. Prosecuting attorney shall prosecute.—The prosecuting attorneys or their deputies shall appear in behalf of the road district of their respective counties when suits are brought against delinquent poll taxpayers, and shall receive a fee of two dollars and fifty cents for each judgment obtained, to be recovered off the defendant, which shall be taxed against the defendant as other costs in the case. (Laws 1909, p. 870.)

Sec. 11767. Board shall assess property.—The township board of directors shall, at the regular meeting in April of each year, assess upon all real and personal property in their township made taxable by law for state and county purposes, including railroad, telegraph and telephone lines, a tax for road and bridge purposes, which shall not exceed twenty-five cents on the one hundred dollars valuation. Said road tax shall be collected and paid by the township collector into the township treasury as other township tax, and the township treasurer shall place the same to the credit of the road district from which said tax was collected, and shall pay same to the overseer of said district on the warrants of the township board. The money derived from such road tax shall be expended by the respective road overseers, under the direction of the township board, in purchasing necessary tools with which to work the roads in his district, in purchasing material to build or repair bridges and culverts, and for such other expenditure as may be necessary to keep the roads in his district in good order: *Provided,* that the money derived from taxes on property, situate wholly within incorporated cities, towns and villages, shall be paid to the treasurer of such city, town or village, to be applied to the construction and reconstruction of roads and highways in said municipal corporations. (Laws 1909, p. 870.)

Sec. 11768. Township collector to collect road tax—power of collector.—The township collector shall have power to collect any road tax that may be due, as such officer is authorized to collect state, county and township taxes. And in addition to the mode provided, or that may hereafter be provided by law for the collection of delinquent taxes, said township collector shall have power, in the corporate name of such township, to sue for and recover in any court of competent jurisdiction any delinquent taxes assessed under the provisions of this article when he deems such proceedings necessary, or may be so directed by the township board. (Laws 1909, p. 870.)

Sec. 11769. Additional tax of twenty-five cents on hundred dollars for roads and bridges may be levied in any county.—The county court of any county in the state which is not under township organization, and the township board of directors of any township in any county which is under township organization, may, annually, in their discretion, at the same time and in the same manner as taxes are now required by law to be levied for county purposes, levy an annual tax in addition to those now authorized by law in any amount not exceeding twenty-five cents on each one hundred dollars valuation on all

property subject to taxation in such county or township, to be known as a special road and bridge tax. (Laws 1909, p. 767.)

Sec. 11770. How collected and for what used.—All taxes levied under the provisions of the foregoing section shall be collected in the same manner and at the same time as taxes for county purposes are now collected, and all moneys arising therefrom shall be by the county court or township board of directors appropriated, set apart and kept as a special road and bridge fund, and shall be used for road and bridge purposes, and for no other purpose whatever. (Laws 1909, p. 767.)

Sec. 11771. County court to cause delinquent road tax list to be levied upon lands.—It shall be the duty of the county court to cause the delinquent road tax list returned by the respective township collectors to be levied upon the lands so returned and collected as the delinquent taxes of the county are levied and collected, and when so collected, shall be paid over to the treasurers of the several townships. (Laws 1909, p. 870.)

Sec. 11772. Township clerk to certify rate of taxation, when.—It shall be the duty of the clerk of each township wherein railroad, telegraph and telephone property is located, on or before the 10th day of August of each year, to certify to the county court the rate of taxation levied by such township for road purposes, and the county court shall levy the rate so certified by the township clerk on all railroad, telegraph and telephone property in such township; and said tax shall be charged on the railroad tax book and collected and distributed to the township treasurers in the same way that the city, town and village tax on such railroad, telegraph and telephone property is charged, collected and distributed to city treasurers. (Laws 1909, p. 870.)

Sec. 11773. Board shall construct and repair all bridges, when.—The township board of directors shall construct and keep in repair all bridges in their district costing less than one hundred dollars; and shall make all necessary repairs, costing less than twenty-five dollars, upon bridges which are now or may hereafter be built within the township: *Provided,* whenever it shall be necessary in any road district for the township board to cause to be built a bridge, the cost of which exceeds twenty-five dollars, the board may, in its discretion, advertise for bids by giving at least fifteen days' notice, by five written notices posted in as many public places in said township, or by publication in some newspaper published in the district of the time and place of letting the contract. (Laws 1909, p. 870.)

Sec. 11774. Board to furnish county court estimates on bridges costing over $100.—Whenever it shall be necessary in any township to build a bridge, the cost of which shall exceed one hundred dollars, the township board of directors shall make out and cause to be presented to the county court a certified statement of the amount of money necessary for the construction thereof, and, if deemed proper, the said county court shall cause the bridge to be built by contract as provided by law. (Laws 1909, p. 870.)

Sec. 11775. Adoption of the contract system.—Whenever the inhabitants of any road district of any county of this state having heretofore adopted or which may hereafter adopt township organization may desire to adopt the contract system of working roads in such road district, it may be accomplished in the following manner: Upon the reception by the township clerk of a petition from a majority of the resident householders of such road district, residing outside of an incorporated city, town or village, setting forth the facts, the township board of directors shall at its next regular meeting, if such meeting be held within thirty days after the reception by the township clerk of such petition, and otherwise at a special called meeting of the township board to be held not later than thirty days after the reception of such petition, order the adoption of said system in such road district. The township clerk shall enter in the record of the township board all the proceedings concerning the adoption of said contract system and shall declare, by publication, the adoption of said system in such road district. (New section, Laws Mo., 1911.)

Sec. 11776. Letting of contract, etc.—Upon the adoption of the contract system of working the roads, the township board of the road district so adopting the same shall, on or before the fifteenth day of April next following such adoption, make an order, duly entered of record, requiring the property tax of such road district assessed for road purposes to be paid in money. The said township board shall immediately give notice of the letting of the working of the roads in such road district by contract, publicly, to the lowest and best bidder, with specifications in such notice of the work to be done; said notice shall be given by at least four written or printed handbills, posted in at least four public places in such road district at least ten days before the letting of such contract. The township board at the time set forth in the notices above provided for shall proceed to let the contract for the working of the roads in said road district to the lowest and best bidder, provided that no person or persons who are in anywise connected with any member of such township board shall be an eligible bidder. The person or persons whose bid shall be accepted shall, within ten days thereafter, severally enter into bond with the township board in such amount and with such personal security as shall be acceptable to and be approved by said township board, conditioned that they will faithfully perform the conditions and stipulations contained in said contract, and any breach of the conditions of said bond may be sued on in any court of competent jurisdiction in the corporate name of such township. (New section, Laws Mo., 1911.)

Note.—Section 11777 repealed by Laws Mo. 1911, page 429.

Sec. 11778. Duties of contractors—liable on bond.—Any person with whom the board shall enter into written contract to do a certain specified work on the public roads shall be responsible on his bond as such contractor for the faithful performance of his said contract; and any contractor who shall willfully fail or neglect to keep any road under his care in good repair, or shall in any manner fail to faithfully perform or discharge any of his duties, according to the terms

of his contract, or shall willfully fail or refuse after five days' notice to repair any bridge or culvert which, under the terms of the contract, it is his duty to repair, shall be held responsible upon his said bond for any and all damages which occur to persons or property by reason of such failure: *Provided,* that nothing herein contained shall prevent the contractor from pleading as a defense for such failure to perform his work in the time specified in the contract that the same was caused by unusual weather and that with due care and diligence he could not have avoided such delay. (Laws 1909, p. 870.)

Sec. 11779. Board shall have power to cause grading or repairing of roads.—Any township board, by an order of record, shall have power to cause to be graded or otherwise improved or repaired any public highway, or part thereof, within such township, at such time, to such extent and of such dimensions as shall be provided by any such order entered of record: *Provided,* all such work and construction shall be under the supervision of the county highway engineer, and the township board shall have power, at any time after such order, to rescind the order authorizing the proposed grading or other improvement if they deem such rescission to the best interest of the township: *Provided,* the township board may proceed with such grading or other improvement if the property owners in the neighborhood of said public road shall cause to be paid into the township treasury the amount of the estimated cost and probable damages of such grading or other improvements, or such part of the same as the board may direct, the township paying the balance thereof. (Laws 1909, p. 870.)

Sec. 11780. Board may make appropriation for repairs.—Whenever one or more of the plank, gravel or macadamized roads of any township have been so damaged or destroyed by freshets, landslides, water courses, wear or other casualty, neglect or inattention as to render the same unfit for travel and hinder free and necessary transportation, and the township board of such township shall be satisfied that the ordinary levy set apart by the board for road purposes will be inadequate to provide money necessary to repair such damages and to keep such roads in repair, said board may, as soon as that fact shall be known by them, examine into the condition of such roads, make an estimate of the amount required to repair the same, and may make an appropriation for that purpose out of the general or other available township funds—said money to be expended under the general supervision and direction of the county highway engineer, and in such manner as will most likely secure the reconstruction or improvement of such road as desired by the township board. (Laws 1909, p. 870.)

Sec. 11781. Board shall keep record of money received and disbursed—to keep list of road tools.—The township board of directors in all counties under township organization shall keep, or cause to be kept, a full and correct record of all moneys received and disbursed on account of roads in such township, showing in detail from whom and on what account such money was received and for what disbursed, together with a complete inventory for all tools, road machinery and

other property belonging to the road districts of such township, and on or before the first day of March in each year shall cause to be published, for the information of the citizens of the township, an itemized statement of such receipts and expenditures, inventory of road tools, machinery and other property, together with such other information as to condition of roads and bridges and the needs of same as may be deemed of value. (Laws 1909, p. 870.)

Sec. 11782. Guideboards.—It shall be the duty of the road overseer to cause suitable guideboards to be put up at such places as they may deem necessary, in such manner as they may direct. (Laws 1909, p. 870.)

Sec. 11783. Gauge posts.—The overseer shall erect and keep up a gauge post at the ford of every creek or river within his district that becomes unfordable or impassable at the crossings of the public roads of the districts, which posts shall be at low water mark, on which shall be inscribed in plain, legible letters or figures the depth of low water mark, together with a scale of feet showing the scale of feet above low water mark to the height of which said stream is known to have risen, the cost of which shall not exceed the sum of one dollar and fifty cents. Such water gauge shall be tested at least once a year, and if after testing the same it is found that the ford has washed out deeper, or bars formed, so that gauge is incorrect, it shall be the duty of the road overseer to reset the same, so as to mark the correct depth of the stream at such crossing. (Laws 1909, p. 870.)

Sec. 11784. Drainage—taking material.—The overseer is hereby authorized to enter upon any land adjacent or near to any line or publis road in his district, for the purpose of opening any ditches for the drainage of the road or to procure any necessary material of earth, stone or timber for road purposes; the owner of such premises entered to be allowed a reasonable compensation for damages done or material taken: *Provided,* in case the overseer cannot agree with the owner or owners thereof, said overseer may appoint three freeholders to act as a jury, who shall be sworn and go upon the premises and assess the damages which may be caused by opening said ditches or taking such material, which damages so assessed shall not exceed a fair remuneration therefor. Shade or ornamental trees shall not be taken without the consent of the owner. (Laws 1909, p. 870.)

Sec. 11785. County court may appropriate funds, when.—Whenever the citizens along the line of any public road in a district subscribe any sum not less than twenty-five dollars for grading, graveling or otherwise improving any portion of such road, and shall deposit the same with the township treasurer, the county court may appropriate a like amount for such purpose out of any funds of the county not otherwise appropriated. (Laws 1909, p. 870.)

Sec. 11786. County court may authorize plats to be made—to be filed—expenses paid, how.—It shall be lawful for the county court of any county, upon the application of the township board of directors, to empower and authorize the county highway engineer of said county, under the direction of the township board of such township, to

survey, locate and plat the public highways of such township; and when such plat shall have been completed and approved by the township board, it shall be filed in the office of the township clerk, together with the minutes and report of such survey, to be kept by such township clerk as a part of his official records, the expenses of such proceeding to be paid out of the road fund of the township. The said plat, minutes and reports, or a certified copy of the same, over the hand and seal of the township clerk, shall be *prima facie* evidence that road or roads therein contained or described have been constituted a public highway according to law. (Laws 1909, p. 870.)

Sec. 11787. Prosecuting attorney to prosecute all actions.—It shall be the duty of the prosecuting attorney of the county or his assistant to prosecute all actions brought under this article. (Laws 1909, p. 870.)

Sec. 11788. Penalty.—Any official or other person who shall willfully fail to comply with any of the provisions of this article, and any person who shall willfully violate any of the provisions thereof, shall be deemed guilty of a misdemeanor, and where no other or different punishment is provided, shall be punished by a fine of not less than five dollars nor more than five hundred dollars. (Laws 1909, p. 870.)

CHAPTER 102.

ROADS AND HIGHWAYS.

ARTICLE V.

COUNTY HIGHWAY ENGINEER—APPOINTMENT AND DUTIES OF.

SECTION

10551. County highway engineer—how appointed.
10552. To execute bond.
10553. Compensation.
10554. Qualifications—may be removed, when.
10555. Office, where and how maintained.
10556. May appoint county surveyor—compensation—may appoint assistants.
10557. To be custodian of road tools.
10558. To have supervision over highways of county.
10559. To make personal inspection.
10560. To report condition of roads, when—to make yearly report to state highway engineer.
10561. To hold annual meeting of road overseers—penalty for failure to attend.
10562. Overseers to follow plans of engineer—penalty for failure.
10563. Engineer to file annual statement, when—to prepare road map.

SECTION

10564. Duties of county court—bids for work, how let.
10565. May authorize overseers to enter into contract.
10566. Contractor shall make report to engineer, how, when.
10567. Contractor failing to execute contract—remedy.
10568. Engineer to inspect contract work and report.
10569. Contractor—right of appeal.
10570. Damages—contractor, when liable.
10571. Provisions of this article may be suspended, how.
10572. Counties where highway engineer is dispensed with, how governed.
10573. In counties where highway engineer act has been suspended question may be resubmitted, when, how.
10574. Shall not be sales agent, etc.
10575. Penalty for violation or neglect.

Sec. 10551. County highway engineer—how appointed.—There is hereby created in the several counties of the state of Missouri the office of county highway engineer, and the county courts of each county in this state are hereby authorized and empowered to appoint, and shall appoint, a highway engineer within and for their respective counties at the first meeting of such court in the month of February, 1910, and each year thereafter. Such county highway engineer so appointed shall serve for a period of one year and until his successor is appointed and qualified. Any vacancy occurring in the office of county highway engineer, from any cause, shall be filled by appointment by the county court. (Laws 1909, p. 756.)

Historical.—The office of county highway engineer was first created in 1907. See Laws of 1907, p. 401. In 1909 said act was repealed and the present article enacted in lieu thereof.

Sec. 10552. To execute bond.—Before entering upon the performance of his duties, the county highway engineer and his assistants shall each execute and deliver to the county court a bond in such sum as may be fixed by the court, with two or more sufficient securities, or the bond of a surety company authorized to do business in this state, to be approved by the court, conditioned for the faithful discharge of his duties as such highway engineer; and that he will account for and deliver to his successor in office, at the expiration of his term of office, all tools, machinery, books, papers and other property belonging to the county and road districts thereof. (Laws 1909, p. 756.)

Sec. 10553. Compensation.—The county highway engineer shall receive such compensation as may be fixed by order of the county court of his respective county: *Provided,* his salary shall not be less than three hundred dollars nor more than two thousand dollars per annum: *Provided further,* that in all counties in this state which contain or may hereafter contain more than fifty thousand inhabitants, and whose taxable wealth exceeds, or may hereafter exceed, the sum of forty-five million dollars, and which adjoin or contain therein, or may hereafter adjoin or contain therein, a city of more than one hundred thousand inhabitants by the last decennial census, the county surveyor and *ex officio* highway engineer shall receive a salary of not less than two thousand dollars nor more than three thousand dollars, as may be fixed by the county court. (Laws 1909, p. 756.)

Sec. 10554. Qualifications—may be removed, when.—The county highway engineer shall be a resident of the state of Missouri, and shall be skilled in the laying of drains, in bridge, culvert and road building and general road work, and he shall have a practical knowledge of civil engineering, and shall be active and diligent in the discharge of his duties. If any county highway engineer shall fail, refuse or neglect to visit and inspect, in person or by deputy, the roads, bridges and culverts in each road district in the county, at frequent and regular intervals, or shall fail, refuse or neglect to advise with, assist and direct the road overseers of his county in the performance of their duties, or if he shall fail, refuse or neglect to perform any of the duties imposed upon him by law, or if he be found incompetent or in

any manner unfitted for such office, he may be removed from office by the county court, and it shall be the duty of the county court to remove such county highway engineer forthwith and to appoint a successor in his stead. (Laws 1909, p. 756.)

Sec. 10555. Office, where and how maintained.—The county highway engineer shall maintain an office at the county seat of the county of which he is an officer, and his office room shall be provided him at the expense of the county, and it shall be the duty of each county highway engineer to keep and carefully preserve all books, plats and papers pertaining to his office in the room so provided by the county. (Laws 1909, p. 756.)

Sec. 10556. May appoint county surveyor—compensation—may appoint assistants.—The county court of the several counties in this state may, in their discretion, appoint the county surveyor of their respective counties to the office of county highway engineer, provided he be thoroughly qualified and competent, as required by this article; and, when so appointed, he shall receive the compensation fixed by the county court, as provided in section 10253, in lieu of all fees, except such fees as are allowed by law for his services as county surveyor: *Provided,* that in counties in which the provisions of this article with reference to the appointment of a county highway engineer have not been suspended as hereinafter provided, the county surveyor may refuse to act or serve as such county highway engineer, unless otherwise provided by law. In the event that the county highway engineer cannot properly perform all the duties of his office, he shall, with the approval of the court, appoint one or more assistants, who shall receive such compensation as may be fixed by the court: *Provided, however,* that in all counties in this state which contain or which may hereafter contain more than fifty thousand inhabitants, and whose taxable wealth exceeds or may hereafter exceed the sum of forty-five million dollars, or which adjoin or contain therein, or may hereafter adjoin or contain therein, a city of more than 100,000 inhabitants by the last decennial census, the county surveyor shall be *ex offició* county highway engineer, and his salary as surveyor and *ex officio* county highway engineer shall be not less than two thousand dollars and not more than three thousand dollars, as may be fixed by the county court, and all fees collected in such counties by the surveyor, for his services as surveyor, shall be paid into the county treasury, to be placed to the credit of the county revenue fund: *Provided, also,* that in the counties last above mentioned the county surveyor, as surveyor and *ex officio* county highway engineer, may appoint, subject to the approval of the county court, such assistants as may be necessary, and no assistant shall receive more than twelve hundred dollars per annum: *Provided further,* that in all counties in this state which contain or may hereafter contain two hundred thousand and less than four hundred thousand inhabitants, and which county or counties contain one hundred and fifty miles or more of macadamized roads, outside of municipal corporations, and which county or counties pay to the county surveyor a salary of three thousand dollars or more an-

nually, the county surveyor of such county or counties shall be *ex officio* county highway engineer. (Laws 1909, p. 756.)

Sec. 10557. To be custodian of road tools.—The county highway engineer shall be custodian of all tools, material and machinery belonging to the road districts and to the county, except as may be otherwise provided by law. When delivering to any road overseer the tools and machinery belonging to the district, he shall require from the overseer an inventory and receipt for all such tools and machinery, and the overseer shall be responsible for the proper care and handling of said tools and machinery, and shall see that they are properly kept when not in use, and shall account for the same to the county highway engineer. (Laws 1909, p. 756.)

Sec. 10558. To have supervision over highways of county.—The county highway engineer shall have direct supervision over all public roads of the county, and over the road overseers and of the expenditure of all county and district funds made by the road overseers of the county. He shall also have the supervision over the construction and maintenance of all roads, culverts and bridges. No county court shall order a road established or changed until said proposed road or proposed change has been examined and approved by the county highway engineer. No county court shall issue warrants in payment for road work or for any other expenditure by road overseers, or in payment for work done under contract, until the claim therefor shall have been examined and approved by the county highway engineer. (Laws 1909, p. 756.)

Sec. 10559. To make personal inspection.—The county highway engineer shall personally, or by deputy, inspect the condition of the roads, culverts and bridges of each district as often as practicable, and, upon the written complaint of three freeholders in any such district, of the bad or dangerous condition of the roads, culverts or bridges of such district, or of the neglect of duty by any road overseer of any such district, or of neglect of any contractor on roads let by contract, it shall be the duty of the county highway engineer to at once visit said road and investigate the complaint, and, if found necessary, to at once cause such road to be placed in good condition. (Laws 1909, p. 756.)

Sec. 10560. To report condition of roads, when—to make yearly report to state highway engineer.—The county highway engineer shall, at each regular term of the county court, and at such other times as required by the court, file a detailed statement of the condition of the roads, and the amount of money available for each district, with his recommendation as to what action should be taken by the court for the repair or improvement of the roads. The county highway engineer shall report his full name and address to the office of the state highway engineer within ten days after qualifying. He shall make a yearly report during the month of January for the preceding year, upon blanks furnished him, to the state highway engineer, of the available information in connection with the road, culvert and bridge work in his respective county. Upon a written request of the state

highway engineer, the county highway engineer shall furnish him with a copy of the road map of his county, if there be such a map, for which he shall be reasonably compensated by the state highway department. (Laws 1909, p. 756.)

Sec. 10561. To hold annual meeting of road overseers—penalty for failure to attend.—It shall be the duty of the county highway engineer to call a meeting at the county seat each year of all road overseers of the county, for consultation and conference touching the conditions and needs of the roads and bridges of the county and methods of improving same. Such meeting shall be held at a time designated by the highway engineer, between the first and fifteenth day of March. At such meeting of road overseers the county highway engineer shall instruct the overseers in the best and most economical plans for the working and improving roads, collecting and expending the district road funds, and, if practicable, adopt a uniform system of road work for the county. Any overseer failing to attend any such annual meeting without reasonable excuse shall, upon complaint of the county highway engineer, be removed from office by the county court or by the township board, as the case may be. (Laws 1909, p. 756.)

Sec. 10562. Overseers to follow plans of engineer—penalty for failure.—All overseers shall follow the plans and instructions of the county highway engineer in all matters concerning the expenditure of the funds and improving the roads, and should any road overseer fail or refuse, without sufficient cause, to follow the plans and instructions of the county highway engineer, the county highway engineer may suspend such overseer, and shall at once report the matter to the county court, and said court, upon hearing, may remove such overseer from office. (Laws 1909, p. 756.)

Sec. 10563. Engineer to file annual statement, when—to prepare road map.—The county highway engineer shall, on or before the first day of January in each year, file with the county court a report, in writing, showing the general condition of the roads and bridges of the county, including all improvements, if any, made during the past year, together with his recommendations as to what improvements should be made during the coming year, and what part of same, if any, should be let under contract, as hereinafter provided. At the same time said highway engineer shall file with the county court a map or plat showing the township and road district lines, together with his recommendations as to the number, size and boundaries of road districts and needed changes in same, and he shall give the county court such further aid and assistance as it may require with reference to the laying out of road districts or changing the number or boundaries thereof. (Laws 1909, p. 756.)

Sec. 10564. Duties of county court—bids for work, how let.—The county court, at any term thereof, may, by an order of record, designate any road work, such as reducing the roadbed to an established grade, surfacing any road with stone or gravel or other material, the digging of ditches, placing of drains and the building of culverts or bridges, or the maintaining of any road or part of road for a definite

time, which, in the opinion of the court, should be let under contract. The court shall thereupon direct the county highway engineer to enter into contracts, in writing, with suitable persons, subject to the approval of the court, for any road or bridge work so ordered to be let under contract. The county highway engineer shall draw plans and specifications for any road or bridge work ordered by the court to be let under contract. Such specifications shall be drawn for each separate piece of work, which shall be let under separate and distinct contracts, and all specifications shall be subject to the approval of the county court. Before any bid for working or repairing the roads or for any bridge or other work shall be opened, the county highway engineer shall file with the county clerk his estimate of the cost of such work, and no contract shall be let for an amount above the estimate so made by the county highway engineer. Such contract shall be let to the lowest and best bidder, in pursuance of not less than two weeks' public notice of the time and place when and where sealed bids will be received, said notice to be published by the highway engineer in some newspaper of general circulation in the township where the work is to be done, or by not less than three written or printed notices posted in such township, as the court may direct. The county highway engineer may reject any and all bids made, and when the bid on any road or bridge work shall be rejected by the highway engineer, he may receive and act upon any bids that may be made to him for ten days after the advertised time for receiving bids without readvertising, provided the same is not in excess of his estimate filed with the county clerk; *and provided further,* that before any contract is entered into, it shall be approved by the county court. The county highway engineer shall require each contractor whose bid is accepted to enter into a contract, in writing, which shall specify the work to be done and the time of its completion, and every contractor with whom a contract has been made for any road or bridge work shall keep the road open to travel and in as good condition as possible during the life of the contract. The work shall be performed within such time as may be limited by contract. The county highway engineer shall require each contractor to enter into a bond to the county in a sum of not less than twice the contract price, as may be ordered by the county court, with not less than three resident freeholders of the county, or surety company authorized to do business in this state, as sureties, conditioned for the faithful performance of his contract, and to pay all damages that may accrue to any person by reason of his failure to comply with the terms of such contract. The county highway engineer shall present such contract to the county court, and the court shall approve or reject such contract and bonds, or either of them, and may require new contracts and bonds to be entered into by such contractors, or may order the county highway engineer to enter into contracts with other parties for such road work and in such time as the court may direct. Such contract and bond as shall be approved by the court shall be filed in the office of the county clerk. The same

person may be awarded the contract for one or more separate pieces of work, but a separate and distinct contract and bond shall be entered into by the contractor for each separate piece of work awarded him. (Laws 1909, p. 756.)

Sec. 10565. May authorize overseers to enter into contract.—The county highway engineer shall use his discretion as to the best and most economical means of keeping in repair the roads of the county. He may authorize the road overseer to enter into contract with any suitable persons to maintain any road or part of road by the use of the road drag, or by any other plan or method that he may deem expedient, and may include the [repairing] (repaving) and building of all bridges and culverts costing less than fifty dollars. (Laws 1909, p. 756.)

Sec. 10566. Contractor shall make report to engineer, how, when. It shall be the duty of each contractor who has entered into contract for any road work to report, in writing, under oath, to the county highway engineer, on or before the second day of each month, setting forth the amount and character of work done by him during the preceding month, the number of hands and teams employed and the total number of days' work done by them, and the cost of such hands and teams, the material purchased, and its cost, and where applied, and any other facts or statements that the county highway engineer may require. The county highway engineer shall carefully examine such reports, and shall indicate, in writing, attached to the reports, any error therein or any explanation that he may deem necessary for the information of the court, and if found to be correct, shall so state; and on or before the first day of the next term of the county court thereafter shall file same in the office of the county clerk for the use of the court. The court shall, at such term, examine such reports, and may correct and approve the same and order such amounts to be paid thereon as the court may deem safe and just and as may be provided in the contract of such contractor, but the court shall not pay in full for any work to be performed by contract until the same has been completed and accepted by the county highway engineer and approved by the court. Upon the completion of any piece of work according to the terms of the contract, to the satisfaction of the court, the court shall settle in full with the contractor, but no such settlement shall be a bar to the county or to any individual recovering any damages that may be sustained by reason of any defective work or other failure on the part of the contractor to perform the duties required in his contract. Before any final settlement is made with any contractor, the county highway engineer, or his duly authorized assistant, shall first have made a personal inspection of the work performed, and shall certify, under his oath of office, that he has made such personal inspection, and that the contractor has performed his work according to contract. (Laws 1909, p. 756.)

Sec. 10567. Contractor failing to execute contract—remedy.—If any contractor shall fail to perform any work within the time specified in his contract, the county highway engineer shall be authorized to

have such work done by other persons, and shall report to the county court, with the cost thereof, and the court shall deduct such cost from the amount that may be there or thereafter due such contractor; and if such cost exceeds the total amount that may be thereafter due such contractor, the court shall order suit to be brought on such contractor's bond for such amount of costs as remain unpaid. Nothing herein shall prevent the contractor from pleading as a defense to such failure to perform his work in the time specified in the contract that the same was caused by unusual weather, and that with ordinary care he could not have avoided such delay; and if the county highway engineer shall be satisfied that such has been the cause of the delay, he shall give permission, in writing, to such contractor for further reasonable time to perform such work, and the contractor shall not be liable for any damage to the county for such delay. (Laws 1909, p. 756.)

Sec. 10568. Engineer to inspect contract work and report.—The county highway engineer shall inspect the work contracted for from time to time, and shall make reports to the county court at the regular terms thereof, or more frequently, if required, showing the condition and progress of the work. If the court shall find, upon the report of the county highway engineer, that any work has not been done according to the contract, the court shall order the county highway engineer to have such work done according to the terms of the contract, and the expense thereof shall be adjudged against the contractor and the securities on his bond, together with ten per cent. of the cost thereof, as a penalty for such failure to perform the work according to the contract. All final settlements made with the contractors shall be judgments, and shall bind the contractor and his sureties. (Laws 1909, p. 756.)

Sec. 10569. Contractor—right of appeal.—Any contractor shall have the right to appeal from any order of the county affecting his interests as such contractor, such appeal to be governed by the law regulating appeals from justices of the peace. When an appeal is taken by any contractor, the cause shall be entitled "———, road contractor of district No. —, appellant, against ——— county, respondent." (Laws 1909, p. 756.)

Sec. 10570. Damages—contractor, when liable.—Any person with whom the county highway engineer shall enter into a written contract to do any certain specified road work shall be responsible on his bond as such contractor for the faithful performance of his said contract, and any contractor who shall willfully fail or neglect in any manner to perform or discharge any of his duties according to the terms of his contract, shall be held responsible for any and all damages which may occur to persons or property by reason of such failure. (Laws 1909, p. 756.)

Sec. 10571. Provisions of this article may be suspended, how—when.—Whenever a petition, signed by at least ten per cent. of the taxpaying citizens and voters representing at least two-thirds of the townships of any county in this state, shall be presented to the

county court thereof, asking that a proposition be submitted to the qualified voters of the county, to determine whether or not the provisions of this article shall continue to apply to such county, the court, after due consideration, may order that a proposition for the approval or rejection of the provisions of this article be submitted to the qualified voters of the county at any general election held for the purpose of electing county officers, or upon a petition, signed by at least fifteen per cent. of the taxpaying citizens and the voters representing at least two-thirds of the township of any county in this state asking that such proposition be submitted at a special election, the county court shall call the special election for the submission of such proposition within ninety days from the filing of such petition: *Provided,* such special election shall not be held within ninety days of any general election. The county court shall give notice of such election by publishing the same in some newspaper published in the county. Such notice shall be published for at least two consecutive weeks, the last insertion to be within ten days next before such election, and such other notice may be given as the court may deem proper. The proposition so submitted shall be printed on the ballots in the following form: "For county highway engineer act," "Against county highway engineer act," with the direction "Mark out the clause you do not favor." If a majority of those voting at such election upon the proposition vote for the county highway engineer act, then this article shall remain in full force and effect in such county, but if a majority of those voting at such election upon the proposition vote against the county highway engineer act, then this article and the provisions of the law relating to the appointment and duties of a county highway engineer shall not be enforced in such county. (Laws 1909, p. 756.)

Sec. 10572. Counties where highway engineer is dispensed with, how governed.—In all counties in this state that may vote against the county highway engineer act in the manner prescribed in section 10571 of this article, all matters relating to roads and highways and the expenditures of the public funds thereon shall be governed by the laws then in force in such counties, except that part of the law pertaining to the appointment of the county highway engineer. In all counties wherein the services of a county highway engineer are dispensed with, as provided by section 10571 of this article, the county surveyor shall be *ex officio* county highway engineer, and, as such, shall perform such services pertaining to the working, improvement, repairing and maintenance of the roads and highways, and the building of bridges and culverts as provided by this article to be done and performed by the county highway engineer, or as may be ordered by the county court; and for his services as *ex officio* county highway engineer he shall receive such compensation as may be allowed by the county court, of not less than three dollars nor more than five dollars for each day he may be actually employed or engaged as such county highway engineer. The county court may empower the county highway engineer, or the county surveyor when acting as county highway engineer, to employ such assistants as may be deemed necessary to carry out the

court's orders and at such compensation as may be fixed by the court, not to exceed the sum of four dollars per day for deputy county highway engineer nor more than three dollars per day for each other assistant for each day they may be actually employed. (Laws 1909, p. 756.)

Sec. 10573. In counties where highway engineer act has been suspended, question may be resubmitted, when—how.—If any county shall have voted to suspend the county highway engineer act as provided in section 10571, the question may be resubmitted after the expiration of one year, upon the petition of two hundred resident taxpaying citizens and voters representing not less than two-thirds of the townships of the county, at the ensuing election held for the purpose of electing county officials, and if a majority of the qualified votes cast upon the proposition be for the adoption of the county highway engineer act, it shall again become effective and be in force in such county from and after the February term of court following such election. The form of the ballot at such election shall be as follows: "For county highway engineer act," "Against county highway engineer act," with the direction "Mark out the clause you do not favor." (Laws 1909, p. 756.)

Sec. 10574. Shall not be sales agent, etc.—No county highway engineer, county surveyor or deputy county highway engineer, or deputy county surveyor or road overseer shall be the sales agent, for compensation, in the sale to, or purchase by, the state, county or road districts, of road tools, culvert or bridge material or machinery, or be pecuniarily interested in any contract for the building of any bridge or culvert or for the improvement of any public road to which the county or any road district is a party. (Laws 1909, p. 756.)

Sec. 10575. Penalty for violation or neglect.—Any county highway engineer, deputy county highway engineer, county surveyor, deputy county surveyor, road overseer or other road official or county officer who shall violate any of the provisions of this article, or who shall willfully neglect or fail to perform any of the duties by this article imposed upon such officer or official, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than five dollars nor more than five hundred dollars. (Laws 1909, p. 756.)

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